United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-2072

(41661)

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 74-2072

JAMES RHEM, ROBERT FREELY, LEO ROBINSON and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellees,

—against—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; ARTHUR RUBIN, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York,

Defendants-Appellants,

PETER PREISER, Commissioner of Correction of the State of New York; MALCOLM WILSON, Governor, State of New York; and OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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Docket Entries

DATE	FILINGS—PROCEEDINGS
Sep. 10, 70	Filed complaint and issued summons.
Sept. 14, 70	Filed Notice of Motion re: Class Action. Ret. 9/22/70.
Sept. 14, 70	Filed Memorandum of Points and Authorities in support of a class action.
Oct. 16, 70	Filed pltffs notice of motion. Re: Prel. Inj. Ret. 10-27-70.
Oct. 16, 70	Filed pltff memorandum in support of motion.
Oct. 26, 70	Filed Supplemental Memorandum of Points of Law in support of motion.
Oct. 26, 70	Filed Affidavit of Anthony Principe.
Sept. 22, 70	Filed (in court) Affidavit of Anthony Principe.
Oct. 27, 70	Filed MEMO. END. on motion papers filed 9/14/70. This action shall be maintained as a class action. The method of notice suggested by defts. as indicated; Any member of the class who so desires may apply to the court to intervene as indicated; The motion is granted to the extent indicated. SETTLE, ORDER ON NOTICE. McLean, J.
Oct 29, 70	Filed interrogs to defts Lindsay, McGrath, and Batterman.
Nov. 4, 70	Filed pltffs request to inspect.
Nov. 4, 70	Filed pltffs request to inspect.

Docket Entries

DATE	FILINGS—PROCEEDINGS
Nov. 6, 70	Filed Notice to take Deposition.
Nov. 12, 70	Filed Affidavit of service of Notice to take Deposition.
Nov. 13, 70	Filed pltffs interrogs. to defts. Rockefeller and McGinnis.
Nov. 16, 70	Filed Notice of Settlement and Order. Ordered that this action shall be maintained as a class action; Ordered that each person incarcerated in the Tombs shall be given notice as indicated; Ordered that the Legal Aid Society reproduce the necessary numbers of copies of the Notice and deliver them to the Warden of the Tombs for distribution; Ordered that the Warden of the Tombs cause a copy of the this notice to be placed in each cell of the Tombs occupied by a prisoner. McLean, J. (mailed notice to Legal Aid Society)
Jan 13, 71	Filed pltffs notice to take deposition of deft Milton Batterman
Jan. 18, 71	Filed Notice of Motion re: Answer Interrogs. Ret. 1/28/71
Jan. 18, 71	Filed Affidavit of service of Interrogatories on defendants Lindsay, Batterman, and McGrath on 10/28/70. motion to compel discovery.
Jan. 22, 71	Filed Memorandum of Law in support of

Docket Entries

DATE	FILINGS—PROCEEDINGS
Feb. 3, 71	Filed defts Notice of Motion. Re: Dismiss Complaint. Ret. 2-9-71
Feb. 4, 71	Filed Affidavit in oposition to pltfs'. motion to compel discovery, and in support of defendants' motion to dismiss.
Mar. 18, 71	Filed Affidavit in opposition to supplementary affidavit submitted by pltfs.
Mar. 18, 71	Filed Affidavit of George J. McGrath in opposition to pltfs'. motion for pre. inj.
Mar. 18, 71	Filed OPINION #37473 Mansfield, J. The motion to dismiss must be denied. SETTLE ORDER, including proposed rules and provisions for posting of them that will assure full notice to each inmate. (mailed notice).
Apr. 21, 71	Filed Order that plaintiffs take the oral deposition of deft. Commr. McGrath on 5/7/71, or such other date as counsel may agree; ordered that defts. McGrath, Lindsay and Warden, etc. serve answers to Pltfs'. Interrogs. before 5/4/71, etc. etc. Frankel, J. (mailed notice).
Apr. 28, 71	Filed Notice of Motion re: Dismiss Complaint (by Defts. Rockefeller, McGinnis & Stevens).
Apr. 28, 71	Filed Memorandum of Law in support of State Defts'. motion to dismiss.
Apr. 28, 71	Filed ANSWER of George F. McGrath, Arthur Singerman and John V. Lindsay to complaint.

Docket Entries

DATE	FILINGS—PROCEEDINGS
May 5, 71	Filed MEMORANDUM AND ORDER. Defendants' requests for certificate under 28 USC p. 1292(b), and for a stay of all proceedings pending application to the Court of Appeals, are denied, etc. It is so ordered. Mansfield, J. (mailed notice).
May 10, 71	Filed OPINION #37623. Mansfield, J. We approved the proposed modifications as being a satisfactory compliance with the directions on the aspect set forth in the aforementioned decision. It is so ordered. Mansfield, J. (mailed notice).
May 10, 71	Filed stipulation adjourning motion now ret. 5/11/71 to 6/1/71.
May 13, 71	Filed Notice to take Deposition of deft. Albert Glick.
May 14, 71	Filed Notice to take Deposition of Doctor Samuel Newman.
May 14, 71	Filed Notice to take Deposition of Leo C. Zeferetti.
May 26, 71	Filed Plaintiffs' Memorandum of Law in opposition to motion to dismiss by defts. Oswald, Rockefeller and Stevens.
May 28, 71	Filed stipulation adjourning motion now ret. 6/1/71 to 6/8/71.
Jul. 21, 71	Filed order that motion is granted to the extent that deft's are prohibited from in-

Docket Entries

DATE	FILINGS—PROCEEDINGS
	terfering with private consultations between, inmated & their counsel as indicated. Mansfield, J. M/N
Jul. 28, 71	Filed Memorandum & order that the rules for the Manhattan House of Detention for men which were approved in our order of July 20, 71 are hereby amended as indicated. So ordered. Mansfield, J.
Dec 16, 71	Filed MEMORANDUM by Lasker, J.—"Accordingly, the motion to dismiss as to all the State defts is denied. It is so ordered. Lasker, J." m/n
Jan 24, 72	Filed ORDER that defts' Malcolm & Glick are ordered to distribute within 48 hrs. of service of this order a copy of rules approved by the court on 7-20-71, to each & every inmate of Manhattan House of Detention for Men & said defts' are to submit to the Court a statement, under oath, that they have complied with the provisions of this order—Mansfield, J. m/n
Jun 7, 72	Filed 2d Set of interrogs to Defts Malcolm and Glick, propounded by pltffs.
Sept 6, 72	Filed application to intervene as Pltffs on behalf of Al-Sana Caruth, (8-L-A-12) Benito Torres (8-L-A *10); Lionel Williams (8-L-F-3); William Hoad (8-L-F-9).

Docket Entries

DATE	FILINGS—PROCEEDINGS
Sep 15, 72	Filed Pltffs Order to Show Cause, Re: Compelling defts to answer Interrogatories Ret, 9/20/72 at 1100 A.M. before Lasker J. in Rm 2903.
Sep 20, 72	Filed memo endorsed on motion papers filed Sep 6-72. The motion is denied without prejudice to any of the proposing interveners bringing such individual suit as may be warrented. So Ordered Lasker J.
Oct 12, 72	Filed Order that the clerk of this court issue a Writ Of Habeas Corpus ad Testificandum to Peter Schaefer, Warden of the Tombs, 125 White St. N.Y. ordering him to produce the following witnesses for a hearing in this court at 10:00 A.M. on 10/16/72 or as indicated by pltffs counsel: m/n
Oct 27, 72	Filed deft Russell G. Oswald Answer to the complaint.
Nov 13, 72	Trial begun before Lasker J. USDJ. without a jury
Nov 14, 72	Trial continued
Nov 15, 72	Trial continued
Nov 16, 72	Trial continued, adjourned until 1/15/73
Dec 1, 72	Filed defts City's notice of motion, Re; summary Judgment, Ret before Lasker J.
Dec 1, 72	Filed City defts memo of law.

Docket Entries

DATE	FILINGS—PROCEEDINGS
Dec 13, 72	Filed Pltffs memo in opposition to the city Defts motion for Summary Judgment.
Dec 13, 72	Filed Pltffs affidavits by Steven A. Herman in opposition to defts motion for Summary Judgment.
Jan 8, 73	Filed Writ of Habeas Corpus ad Testificandum, To; J. Leland Casscles, Superintendent of Great Meadow Correctional Facility, You are hereby commanded to have the body of William Hood #30549 under safe and secure conduct brought to the Federal Corrrectional Facility in N.Y. on 1/12/73. So Ordered Lasker J.
Jan 8, 73	Filed Order that pltffs may proceed in forma pauperis pursuant to 28 USC 1915 without prepayment of costs & fees. So Ordered Lasker J.
Jan 8, 73	Filed Writ of Habeas Corpus ad Testificandum to Peter Schaffer, Warden, 125 White Street, Manhattan House of detention, You are hereby commanded to have the body of Clayton Williams #300-72-181 under safe and secure conduct brought to the Federal Correction Facility in N.Y. on 1/15/73. So Ordered Lasker J.
Jan 8, 73	Filed Writ of Habeas Corpus ad Testificandum to Theodore Schubin, Ossing Correction Facility, N.Y. You are hereby

Docket Entries

DATE	FILINGS—PROCEEDINGS
	commanded to have the body of Herman Rubinfine #153-173 under safe and secure conduct brought to the Federal Correctional Facility in N.Y. on 1/12/73. So Ordered Lasker J.
Jan 24, 73	Filed Order that counsel for pltffs. reproduce the necessary number of copies of the Notice of Proposed Partial Settlement & Consent Decree, attached hereto as Schedule A. and deliver them to deft. Schaeffer on or before 1/30/73. So Ordered Lasker J. m/n
Jan 16, 73	Trial begun before Lasker J, USDJ, without a jury.
Jan 17, 73	Trial cont.
Jan 18, 73	Trial con't
Jan 22, 73	Trial con't
Jan 23, 73	Trial Con't
Jan 24, 73	Trial con't
Jan 25, 73	Trial cont and adjourned sine die.
Feb 26, 73	Trial continued before Lasker J. USDJ, without a jury.
Feb 27, 73	Trial continued & concluded. (to be submitted) total trial days 13
Apr 2, 73	Filed Writ for Clayton Williams with marshals ret, Writ Satisfied.

Docket Entries

DATE	FILINGS—PROCEEDINGS
Apr 2, 73	Filed Writ for William Hood, with Marshals ret, Writ satisfied.
Apr 2, 73	Filed Writ for Russell Meade, with Marshals ret, Writ satisfied.
Apr 2, 73	Filed Writ for Bert Scott, with Marshals ret, Writ satisfied.
Apr 2, 73	Filed Writ for Hermine Rubinfine with marshals ret, Writ satisfied.
Apr 11, 73	Filed respondent's answers to Interrogatories.
Apr 19, 73	Filed transcript of the record of proceedings dtd. 11/16/73.
Apr 30, 73	Filed Appellant's stipulation of facts.
May 15, 73	Filed defts. memo of law, in support of its motion to dismiss complaint
Jun 25, 73	Filed defts Proposed Findings of Fact.
Jun 25, 73	Filed deft. Interrogatories addressed to the pltff.
Jun 25, 73	Filed Pltffs answer to request to produce.
Jul 13, 73	Filed pltfs. memo in opposition to the state defts. motion to dismiss.
Aug. 2, 73	Filed order that the Court having ordered that notice of the stipulations of settlement of certain claims be distributed throughout the Tombs, said stip. of settlement on the

Docket Entries

DATE	FILINGS—PROCEEDINGS
	within terms & conditions—the City defts. shall submit detailed reports on the implementation of this order to the Court and to counsel no later than 8-31-73—pltffs. may request the court after 12-31-73—for good cause, to order the defts. to submit further reports on the implementation of this order —Lasker, J.—mailed notice
Dec. 14, 73	Filed affdvt. of Steven Herman for W/H/C Ad Test for Thomas Newkirk, W/issued. Ret. 12-19-73.
Dec. 14, 73	Filed affdvt. of Steven Herman for W/H/C Ad Test for Ronald Beau, Writ issued. Ret. 12-19-73.
Dec. 14, 73	Filed affdvt. of Steven Herman for W/H/C Ad Test for Charles Harris, Writ issued. Ret. 12-19-73.
Jan. 8, 74	Filed Opinion #40,182—The State Defendants' motion to dismiss is denied without prejudice to renewal at an appropriate time. To remedy the violations at MHD will cost money and will require deliberate and careful thought and planning. The framing of a decree will demand the considered guidance of all concerned. The parties are instructed to prepare for a conference to determine the contents of an order consistent with this opinion—Lasker, J.—mailed notice.

Docket Entries

DATE	FILINGS—PROCEEDINGS
Jan. 16, 74	Filed affdvt. for W/H/C Ad Test. of Charles Harris, Ret 1-18-74.
Jan. 16, 74	Filed affdvt. for W/H/C Ad Test. of James Green, Ret. 1-18-74.
Jan. 16, 74	Filed affdvt. for W/H/C Ad Test. of John miles, Ret. 1-18-74.
1-26-73	Pre-Trial conf. held.
Jan. 22, 74	Filed W/H/C Ad Test. of James Green, Writ satisfied Jan. 18-74. LASKER, J.
Jan. 22, 74	Filed W/H/C Ad Test. of John Miles, Writ satisfied Jan. 18-74. LASKER, J.
Jan. 22, 74	Filed W/H/C Ad Test of Charles Harris, Writ satisfied Jan. 18-74. LASKER, J.
Mar. 21, 74	Filed Judgment. Ordered that defts. are enjoined from reading any incoming mail addressed to pltfs. from Court, Attys. or public official, etc. Hearing on visiting program will be held Mar. 27–74. LASKER, J. Judgment Entered. Clerk Ent. 3-22-74. (N/M)
3-26-74	Filed affdvt. for W/H/C Ad Test. of Arthur Tucker.
3-26-74	Filed affdvt for W/H/C Ad Test. of Allen Winters.
Apr. 3, 74	Filed W/H/C Ad Test of Allen Winters in favor of pltf. LASKER, J. Writ satisfied. 3-27-74. LASKER, J.

Docket Entries

DATE	FILINGS—PROCEEDINGS
Apr. 3, 74	Filed W/H/C Ad Test. of Arthur Tucker in favor of pltf. LASKER, J. Writ satisfied. 3-27-74. LASKER, J.
Apr. 19, 74	Filed notice of appeal by defts' Benjamin J. Malcolm, Peter Schaefer and Abraham D Beame from the order entered on March 22–74. m/n.
May 15, 74	Filed defts. notice of motion RE: extention of time to file appeal. Ret. 5-20-74.
May 28, 74	Filed transcript of record of proceedings of 11-13-72
May 28, 74	Filed transcript of record of proceedings of 11-14-72
May 28, 74	Filed transcript of record of proceedings of 11-15-72
May 28, 74	Filed transcript of record of proceedings of Jan. 16, 17, 18, 22, 23, 24, 25–1973
May 28, 74	Filed transcript of record of proceedings of 1-16-73
May 28, 74	Filed transcript of record of proceedings of 1-18-73
May 28, 74	Filed transcript of record of proceedings of 1-22-73
May 28, 74	Filed transcript of record of proceedings of 1-23-73

Docket Entries

DATE	FILINGS—PROCEEDINGS
May 28, 74	Filed transcript of record of proceedings of 1-24-73
May 28, 74	Filed transcript of record of proceedings of 2-8-73
May 28, 74	Filed transcript of record of proceedings of 2-26-73
May 28, 74	Filed transcript of record of proceedings of 3-16-73
May 28, 74	Filed notice that original record on appeal has been Certified & transmitted to U.S. C.A. on 5-28-74.
June 3, 74	Filed memo endorsed on notice of appeal & notion filed 5-15-74—motion granted—submit order—Lasker, J.
May 31, 74	Filed order granting defts' motion extending their time to file a notice of appeal on or before 6-3-74—Lasker, J.
Jun 3, 74	Filed Notice of Appeal by L.J. Lefkowitz, Atty Gen. of N.Y.S. atty for defts., Order entered herein on or about Mar. 22, 74 (filed 3-21-74) by Judge Lasker appeal to the USCA. Notices mailed to William E. Hellerstein, Esq. and to Adrian P. Burke Corp. Counsel on 6-11-74.
Jun 27, 74	Filed Reply memorandum in support of Pltff's proposed judgment on the issue of visiting.

Docket Entries

DATE	FILINGS—PROCEEDINGS
7-12-74	Filed transcript of record of proceedings, dated March 27, 1974
7-12-74	Filed transcript of record of proceedings, dated Jan. 18, 1974.
7-11-74	Filed Memorandum.....we cannot accept the City's blank refusal to comply with major portions of our March order...For purposes of reference, we attach to this memorandum a copy of the order we have signed today...Lasker, J.
7-11-74	Filed Order..Ordered, Adjudged and Decreed that defts Malcolm, Rubin and Beame be and hereby are enjoined from confining any persons in the Manhattan House of Detention for Men after Aug. 10, 1974..and it is further Ordered, Adjudged and Decreed that this order shall be subject to reconsideration by the Court at such time as defts Malcolm, Rubin & Beame shall submit to the Court a comprehensive, detailed and and specific plan for the prompt elimination of all conditions and practices at the Manhattan House of Detention.....Lasker, J. m/n
7-24-74	Filed Order to Show Cause for a stay of Disciplinary Procedures....ret. 7-30-74. at 10 AM Rm 2903....Lasker, J.
7-26-74	Filed Municipal Defts' Memo of Law on remand from the Circuit Court.

Docket Entries

DATE	FILINGS—PROCEEDINGS
7-25-74	Filed NYS's Brief in support of resettlement of order to conform to Wolff B. McDonnell.
7-29-74	Filed Petition-Amicus Curiae submitted by Juan D. Powell
7-29-74	Filed affdvt of Pltffs in opposition to the City defts' motion.
7-29-74	Filed Pltffs Memo of Law in opposition to defts' application for a stay pending appeal..
7-30-74	Filed Memo-End. on back of Order to Show Cause filed 7-24-74...Stay granted pending determination of appeal.....subject to conditions specified in open Court 7-30-74..Submit Order on Notice...Lasker, J. m/n
7-31-74	Filed Affidavit of Pltffs.
7-31-74	Filed Pltffs' Memo in opposition to amendment of Schedule A.
7-31-74	Filed Order...that the application for the stay is granted as to: Para. (2)(b) of Schedule A of this Court's order of 3-22-74; and para 3 of Schedule A of this Court except in those instances where counsel substitute is permitted or required by *Wolff* v. *McDonnell,* further Ordered and Adjudged that in all respects defts. are to comply with Schedule A of this Court's order of 3-22-74.. Lasker, J. m/n

Docket Entries

DATE	FILINGS—PROCEEDINGS
8-2-74	Filed Order that the municipal defts' application to stay the implementation of the order dated 7-11-74, pending the disposition of the appeal of this action, is denied..Ordered that upon the fiiing of a notice of appeal, the implementation of the order dated 7-11-74 is hereby stayed until the municipal defts' application for a stay, pending disposition of the appeal, is heard by the 2nd Circuit.....Lasker, J...m/n
8-6-74	Filed notice of appeal by defendants from order of Judge Lasker entered on July 11–74. n/m
8-7-74	Filed transcript of record of proceedings dtd: July 30–74.
8-8-74	Filed Notice to Docket Clerk that the record has been certified and transmitted to USCA on 8-8-74.
*10-27-70	Filed plaintiffs' motion for preliminary injunction supplementary affidavits.
*6-8-71	Filed State defendants' reply memo. in support of their motion to dismiss plaintiffs complaint.
8-20-74	Filed Affidavit dated Feb. 22–71, in oposition to defendant's motion to dismiss.
8-20-74	Filed defendants' Affidavit dated Feb. 23–71, in opposition to plaintiffs' motion for an order compelling discovery and answer.

Docket Entries

DATE	FILINGS—PROCEEDINGS
8-20-74	Filed defendants' pre-trial memorandum of law (affidavit of service dated October 13–72).
8-20-74	Filed City defendants' supplemental memorandum (affidavit of service dated March 12–71).
8-20-74	Filed plaintiffs' supplementary affidavits dated December 9–70, in support of motion for a preliminary injunction.
8-20-74	Filed plaintiffs' memo. in reply to defendant McGrath's Affidavit (Certification of service dated November 5–70).
8-20-74	Filed defendants' McGrath, Lindsay and Singerman's memorandum of law dated Feb. 22–71.
8-20-74	Filed defendants' (municipal defendants) Post-Trial Memorandum of law (Affidavit of service dated June 7–73).
8-20-74	Filed State defendants' Pre-Trial Memorandum of law.
8-20-74	Filed supplementary memorandum in opposition to defendants' motion to dismiss submitted by plaintiff (copy received by State Attorney on March 9–71).

Summons

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

70 Civ. 3962

[CAPTION OMITTED]

You are hereby summoned and required to serve upon Edward Q. Carr, Jr., The Legal Aid Society, plaintiffs' attorney, whose address is 119 Fifth Avenue, New York, New York 10003, an answer to the complaint herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN LIVINGSTON
Clerk of Court
P. MCKEEN
Deputy Clerk

Date: September 10, 1970 (Seal of Court)

Note:—This summons is issue pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Complaint

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

I.

COMPLAINT—CLASS ACTION

1. This is a class action brought pursuant to Title 42 USC §1983 and Title 28 USC §2201 on behalf of all persons incarcerated in the Manhattan House of Detention for Men (hereinafter referred to as the "Tombs,") for injunctive and declaratory relief to redress the deprivation, under color of State law, of their rights under the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution by officials of the State of New York who are responsible for the cruel, unusual, uncivilized and unlawful conditions under which said prisoners are confined in the Tombs, or who have the power, heretofore unexercised, to alleviate these conditions.

2. Jurisdiction is conferred on this Court by 28 USC §§1343 and 2201.

II.

CLASS ACTION ALLEGATIONS

3. This is a class action brought pursuant to Federal Rule of Civil Procedure 23(b)(1)(A) and (B), (2) and (3).

4. The class consists of over 1,000 members, and is so numerous that joinder of all members is impracticable.

5. The class is composed of all persons incarcerated in the Tombs.

6. The named plaintiffs are each detained in the Tombs; the conditions of which they complain apply equally to all members of the class and the relief which they seek is equally applicable to all members of the class; therefore plaintiffs will fairly and adequately protect the interests of the class.

7. All questions of law and fact set forth in this complaint are common to the class.

8. Prosecution of separate actions by individual members of the class would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for defendants, and (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impede their ability to protect their interests.

9. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

10. The questions of law and fact common to the class predominate over any questions affecting only individual

members, and a class action is superior to other available methods for a fair and efficient adjudication of the controversy. Since a majority of the members of the class are indigent, suits by individual members would most likely be brought *pro se,* with all the attendant difficulties of such litigation; any *pro se* applications already brought by members of the class can properly be consolidated with this action. Since there is no conflict among the interests of the members of the class, members have no interest in individually controlling the prosecution and defense of separate actions. This Court is a desirable forum in which to concentrate the litigation of the claims of the class, since it has the power to hear all the claims and to grant appropriate relief. There are not likely to be any difficulties in the management of a class action, since the whereabouts of all members of the Class is known, and all members can easily be informed of this action.

III.

11. Plaintiffs are all adult citizens of the United States who are presently incarcerated in the Tombs, 125 White Street, New York, New York.

12. James Rhem was arrested on March 17, 1970, and is being held in the Tombs in lieu of $3,500 bail on an indictment for burglary in the third degree and grand larceny in the second degree.

13. Eugene Nixon was arrested on June 9, 1970, and is being held in lieu of $5,000 bail on a charge of illegal sale of narcotics.

14. A. Robert Freeley was convicted on December 15, 1969, of grand larceny in the third degree, and was sentenced to State Prison for an indeterminate term not to exceed three years. He was transferred to the Tombs from State Prison on a post-conviction proceeding.

15. Leo Robinson was arrested on November 19, 1968, and is being held in the Tombs in lieu of $2,500 bail on a fugitive warrant from the State of Florida charging him with grand larceny and breaking and entering an automobile.

IV.

16. Defendants are adult citizens and residents of the State of New York and are sued individually and in their capacities as officials of the City and State of New York who are responsible for the administration of the Tombs and the care and custody of its inmates or who have the power to alleviate conditions there but have not exercised that power.

17. Defendant George F. McGrath has been Commissioner of Correction of the City of New York, since 1966; his office and post office address is 190 Centre Street, New York, New York. He is the chief administrative officer of the New York City Department of Corrections, which is responsible for the maintenance and operation of all New York City Correctional Institutions (N.Y. City Charter §§623, 624).

18. Defendant Arthur Singerman has been Warden of the Tombs since August, 1970; prior to that he was Warden of the Bronx House of Detention for Men. He is responsible for the management and supervision of the Tombs, (N.Y. Corr. Laws §§500-K, 139, 140) for the humane treatment of prisoners and for the maintenance of proper discipline (N.Y. State Corr. Comm., Rules and Regs. §100.15).

19. Defendant John V. Lindsay has been Mayor of the City of New York since January, 1966; his office and post office address is City Hall, New York, New York. He is responsible for the administration of all City departments, and has the power to appoint and dismiss the New York City Commissioner of Correction. (N.Y. City Charter §6).

20. Defendant Paul McGinnis is Commissioner of Correction of the State of New York; his office and post office address is Alfred E. Smith State Office Building, Albany, New York. He is the chief administrative officer of the New York State Department of Correction and is charged with insuring that just, humane, safe and sanitary conditions prevail in all institutions for the detention of sane adults in the State of New York, that minimum standards for the operation of local correctional institutions are promulgated and enforced, and that any county jail which becomes unsafe or unsanitary is closed (N.Y. Const. Art. 17, Sec. 5; N.Y. Corr. Law, Sec. 46). He is also empowered to lease state correctional facilities to the City of New York for the confinement of persons sentenced to any New York City correctional institution (N.Y. Corr. Law §6-9).

21. Defendant Nelson A. Rockefeller, has been Governor of the State of New York since 1959; his office and post office address is the Executive Chamber, Capitol, Albany, New York. He is responsible for the administration of all State departments and is empowered to lease or loan any state property to, or to authorize the use of any state personnel by, any municipality or subdivision or agency thereof (N.Y. Exec. Law, §9).

22. Defendant Harold A. Stevens has been Presiding Justice of the New York State Supreme Court, Appellate Division, First Department since 1969; his office and post office address is Madison Avenue and 25th Street, New York, New York. He is required to designate a substitute jail for some or all of the prisoners in any jail in the City of New York which becomes unfit or unsafe for the confinement of prisoners therein. (N.Y. Corr. Law, §504).

V.

23. The conditions under which plaintiffs and the class they represent are incarcerated are so shockingly oppressive, unsanitary, unhealthy and degrading that they are an affront to basic human decency and a violation of fundamental constitutional rights of the plaintiffs and the class they represent.

24. Overcrowding:

a. The Tombs has an official capacity of 932 inmates, but as of the beginning of August, upon information and

belief, it housed over, 1,900 prisoners, and similar overcrowding has been in existence for many years.

b. The majority of the cells in the Tombs measure approximately six feet seven inches by seven feet nine inches, and seven feet ten inches high; they have two beds, and are occupied by two, or often three, prisoners. There are some smaller cells generally accommodating two men.

c. On the ninth and tenth floors are "dormitories," each containing two rows of sixteen beds each, with no space between beds.

d. During the "lock out" period sixty to eighty or more prisoners are enclosed in a corridor approximately sixty feet by seven feet, which is made even smaller by the presence of eleven small tables along one wall.

e. The result of the overcrowding, which has existed for years, is that some men have been forced to sleep on the floor, sometimes without mattresses, and that all inmates are confined under conditions which deny them any privacy, freedom of movement, or adequate space in which to sit, eat, work, or sleep, and suffer both physical and psychological injuries from prolonged exposure to these conditions.

25. Unsanitary Conditions:

a. The Tombs is infested with rats, mice, roaches, lice and other vermin, and extermination efforts are infrequent and totally inadequate to prevent prisoners and their cells, bedding and clothing from becoming

infested, or even to protect prisoners from mouse and rat bites.

b. The mattresses, bedding, and towels are usually filthy and vermin infested, and are infrequently cleaned; cleaning and laundry supplies, such as soap and scouring powder, are only infrequently and inadequately provided for use by prisoners.

c. Inmates are not provided with any change of clothing, or with facilities for cleaning or laundering their clothing, despite the fact that a man may spend months, or in some cases years, in the Tombs awaiting disposition of his case.

d. Inmates do not receive sufficient supplies with which to maintain personal hygiene, such as towels, toothbrushes, toothpaste, and sharp razors; and haircuts are infrequently given.

e. There are only two showers for each section of approximately seventy prisoners, and the showers are dirty and unsanitary.

f. Food at the Tombs, which is unwholesome, unseasoned, and without variety, is served with dirty utensils and under unhygienic conditions.

g. The result of these unsanitary conditions is that inmates of the Tombs must live in constant squalor, which endangers their health as much as it affronts their sensibilities, and which prejudices their defense to criminal charges because of the poor personal appearance it causes them to present whenever they appear in court.

26. Lack of Light and Air:

a. The ventilation system in the Tombs is extremely poor; vents are often clogged and offer little relief from summer heat, and little fresh air, even when they are working properly.

b. Many windows which once provided ventilation have been permanently welded shut.

c. Windows in the Tombs are transluscent, blocking out even sunlight.

d. The result of these conditions is that inmates of the Tombs spend months without seeing the sun or the sky, without fresh air, and in an atmosphere of stench and foulness that increases their misery and endangers their health.

27. Guards:

a. There is an insufficient number of guards, with the result that many jobs which ought to be filled by trained civilian personnel are left to sentenced prisoners, such as the distribution of food.

b. The guards are poorly trained, and many are brutal to the prisoners, attacking or countenancing attacks upon inmates, and insulting and making indecent propositions to inmates and to their visitors, in particular, to their wives.

c. Some guards show favoritism to certain prisoners, arbitrarily granting privileges to favored prisoners and denying them to others.

d. The result of this shortage of trained guards is that prisoners are often mistreated by the guards, and by the sentenced prisoner employees, who may steal and sell prison supplies to inmates, so that the staff of the Tombs, instead of guarding the safety and well-being of the inmates, actually contributes to the inhuman and degrading conditions under which the prisoners at the Tombs must live.

28. Discipline:

a. Guards summarily, arbitrarily and capriciously administer unauthorized disciplinary measures to prisoners. Inmates are not provided with a written copy of the charges against them, are not granted a hearing before a disinterested official, cannot cross-examine their accusers or call witnesses on their own behalf, cannot be represented by counsel or a counsel substitute, and do not receive a written decision by a hearing officer stating the factual and legal basis for the disciplinary measures.

b. Prisoners are generally punished by being placed in "punitive segregation," where an inmate is locked in a cell, often with two other inmates, twenty-four hours a day, and is forbidden to read, talk, smoke or shave. Often inmates are deprived of food, bed or light in punitive segregation. Punitive segregation may last for weeks or months, and may be imposed for trivial causes, or without any just cause.

c. The result of these harsh and arbitrary disciplinary procedures is to increase the atmosphere of brutality

and fear to which all inmates are subjected, and to exacerbate even further the misery and degradation of those prisoners subject to such discipline.

29. Inadequate medical care:

a. Inmates of the Tombs are often denied access to physicians when they are sick, and adequate provision is not made for the treatment of inmates with special medical problems.

b. Inmates who arrive in the Tombs in a state of narcotics withdrawal are given no medical treatment during the withdrawal period.

c. Facilities and staff for adequate psychiatric care are virtually absent from the Tombs, despite the fact that the conditions there exacerbate the many psychiatric disturbances found in all prisoner populations and have led to several suicides and attempted suicides by inmates of the Tombs.

d. The lack of adequate medical care is such that the most abject human misery and disease are commonplace within the walls of the Tombs.

30. Lack of Recreation:

a. Inmates at the Tombs receive no physical exercise; the only recreational areas in the Tombs are a roof top basketball court which has been closed for months, and a basement "gym" which is too small for recreation.

b. The only recreation available for inmates is television (approximately two hours a day), movies once a week,

a radio controlled by the guards, an extremely limited supply of games such as checkers and chess, and walking in the crowded "lock-out" corridor.

c. The Tomb's library is inadequate, and prisoners have infrequent access to it, particularly to the legal materials; prisoners cannot receive magazines or newspaper subscriptions, and there is an extremely limited selection and supply of magazines and newspapers for sale in the commissary.

d. The result of these restrictions is that prisoners must spend months in the Tombs without physical exercise, in idleness and boredom, conditions which inevitably lead to discipline problems and to psychological and even physical disturbances.

31. Visiting and Mail Privileges:

a. Prisoners are allowed visits only from their immediate family and their attorney, and all the visits, with the exception of counsel visits, are totally without privacy, are limited in frequency and duration, and must be conducted through a heavy glass window too high for many women and men to see through, and by means of a telephone which is often out-of-order.

b. Mail is censored, including mail to and from attorneys, courts, and correctional officials, and often there is undue delay in the dispatch and distribution of mail.

c. Prisoners are not permitted to make telephone calls personally, even at the very outset of their incarceration; and requests to have calls made for them are frequently neglected.

d. The result of these restrictions is that inmates of the Tombs are almost totally cut off from the outside world; those who have no immediate family in New York City are held virtually incommunicado for months, and all are hindered in the preparation of their cases for trial.

32. Many members of the plaintiff class spend months in the Tombs under the conditions described above, due to their inability to make bail and to delays in the disposition of their cases. The conditions described above violate the fundamental constitutional rights and human dignity of all inmates of the Tombs, and are particularly shocking and uncivilized for the prolonged detentions of the great majority of the plantiff class who have not been found guilty of any crime.

33. The conditions described above have long been known, or should have been known by defendants. Articles on the conditions in the Tombs have frequently been published in newspapers. An investigation by United States Congressman Edward Koch, early in 1970, who distributed a questionnaire to inmates of the Tombs (the results are attached as "Exhibit A"), was made known directly to defendants McGrath and McGinnis, and indirectly, through the media, to the other defendants. No significant action was taken by any of the defendants to alleviate the conditions at the Tombs as a result of this knowledge.

34. The conditions described above caused the inmates of the Tombs to riot on August 10 and 11, 1970, and to pre-

sent a list of grievances (attached hereto as "Exhibit B") to the press.

35. As a result of the riots described in paragraph 34, defendants McGinnis and McGrath have agreed to transfer approximately 670 sentenced New York City prisoners to an abandoned cell block in Sing Sing Prison, Ossining, New York. As of the end of August, 1970, approximately 600 had been transferred out of the Tombs, primarily to other New York City Correctional facilities at Riker's Island and elsewhere.

36. The steps described in paragraph 35 are totally inadequate and inappropriate to relieve the overcrowding and other conditions in the Tombs; all New York City correctional institutions have a total, official capacity of 8,053; as of August 12, 1970, they contained over 4,000 prisoners in excess of that capacity. Removal of inmates of the Tombs to other, equally overcrowded correctional institutions, in which conditions are no better, and some of which are practically inaccessible to counsel and distant from the courts, is not an effective, appropriate, or significant step to alleviate the overcrowding and the other uncivilized and unlawful conditions at the Tombs.

37. No significant steps are being taken by defendants to relieve any of the other inhuman and cruel conditions described above.

VI.

38. The conditions described above violate the rights of plaintiffs and the class they represent under the First,

Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

39. The overcrowding, unsanitary conditions, lack of light and air, lack of medical care, lack of recreation, restrictive visiting and mail privileges, brutal and inadequate guard services, and punitive and unlawful discipline, are so extreme as to constitute cruel and unusual punishment in violation of the rights of plaintiffs and the class they represent under the Eighth and Fourteenth Amendments.

40. The arbitrary, capricious and unlawful summary discipline administered by the guards at the Tombs deprives plaintiffs and the class they represent of due process of law in violation of their rights under the Fifth and Fourteenth Amendments.

41. The conditions described above, being considerably worse than those to which most sentenced prisoners are subjected in New York City, even though a majority of plaintiffs and the class they represent have not been convicted and are not subject to punishment for any crime, are in violation of the rights of plaintiffs and the class they represent under the equal protection clause of the Fourteenth Amendment.

42. The conditions described above are severely punitive in nature and effectively punish plaintiffs and the class they represent, the large majority of whom are detained prior to trial or sentence before they have been convicted of any crime, or given any sentence, depriving them of life

and liberty without due process of law, and contravening the presumption that they are innocent until proven guilty, in violation of their rights under the Fifth and Fourteenth Amendments.

43. The conditions described above relating to lack of access to the library and to law books, and the restrictions on visiting and mailing privileges, deprive plaintiffs and the class they represent of effective assistance of counsel, and the ability to assist in the preparation of a defense and to secure witnesses in their behalf, in violation of their rights under the Sixth and Fourteenth Amendments.

44. The censorship of all mail deprives plaintiffs and the class they represent of their rights under the First and Fourteenth Amendments.

45. No effective administrative remedies are available to the plaintiffs; the conditions which they protest have been forcefully brought to the attention of the defendants by recent events, either directly or indirectly, affording defendants ample opportunity to institute improvements in these conditions, but defendants have failed to do so.

46. Plaintiffs have no plain, adequate, or complete remedy at law to redress these wrongs; plaintiffs and the class they represent will continue to suffer irreparable harm from the conditions set forth above unless and until the declaratory and injunctive relief sought herein is granted by this Court.

WHEREFORE, plaintiffs pray that this Court:

I. Adjudge and declare that the conditions above described are in violation of the rights of plaintiffs and the class they represent under the Constitution and laws of The United States, and

II. Enjoin defendants from allowing said conditions to continue, and

III. Order defendants McGrath, McGinnis, and Stevens to close the Tombs until such time as it can be made safe, sanitary, and decent for its inmates, and in the meantime, to designate a suitable alternate jail in which the conditions complained of do not exist, and

IV. Enjoin defendants McGrath and Singerman from transferring any plaintiff or member of the class to any other facility where similar conditions exist, or which is inaccessible to visitors and counsel needed for preparation of said prisoner's defense to criminal charges, and

V. Order defendant Rockefeller to place sufficient available facilities and personnel at the disposal of defendants McGinnis and McGrath to enable them to correct the overcrowding now in effect at the Tombs, and

VI. Order defendant McGinnis to offer to lease all available space in New York State correctional institutions to the Department of Correction of the City of New York for the use of sentenced prisoners, and

VII. Permanently enjoin defendants McGrath and Singerman from placing any prisoners in the Tombs in excess of its capacity, and

VIII. Enjoin and order defendants to submit a plan to this Court within thirty days stating the means by which they intend permanently to correct the illegal and unconstitutional conditions described above, and

IX. Retain jurisdiction over this cause until this Court is satisfied that the plans to correct the conditions complained of are, and will continue to be, implemented by the defendants, and

X. Grant such other and further relief as to this Court may seem just and proper, including costs.

Dated: September 10, 1970

Yours, etc.,

EDWARD Q. CARR, JR.
WILLIAM E. HELLERSTEIN
JOEL BERGER
BARBARA A. SHAPIRO
The Legal Aid Society
119 Fifth Avenue
New York, New York 10003

EDWARD Q. CARR, JR.
Attorney-in-Chief
Counsel for Plaintiffs

EXHIBIT "A" ANNEXED TO COMPLAINT

[QUESTIONNAIRE TO INMATES OF THE TOMBS]

TOOMBS QUESTIONNAIRE RESULTS

1. Have you ever been a victim of assault by another prisoner?

Yes	9%
No	77%
No ans.	14%

2. Have you personally seen a guard assault an inmate?

Yes	46%
No	36%
No ans.	18%

3. What is the number of persons sleeping in your cell?

2	21%
3	45%
2 & 3	12%
4	3%
3 & 4	7%

4. How long was it before you received a blanket, towel and mattress?

Immediately:	Blanket	12%
	Towel	7%
	Mattress	8%

Exhibit "A" Annexed to Complaint

Less than one week:	Blanket	27%
	Towel	16%
	Mattress	22%
More than one week:	Blanket	17%
	Towel	22%
	Mattress	18%
Not yet:	Blanket	15%
	Towel	18%
	Mattress	6%

5. How often are your sheets and blankets cleaned?

Sheets	Weekly	75%
Blankets	Never	92%

6. Are you given enough soap?

No 79%

7. Do you receive adequate medical care?

No 91%

8. Do you have the services of a social worker?

No 90%

9. If you are a drug addict, please describe the procedure for your detoxification.

38% of the prisoners were on drugs when they entered the Toombs. All claimed cold turkey.

EXHIBIT "B" ANNEXED TO COMPLAINT

(as reported in the New York Times, August 11, 1970, p. 30)

Text of Tombs' Inmates' Grievances

The following is the text of the demands issued yesterday by prisoners at the Manhattan House of Detention for Men:

We, the inmates of the ninth floor of Tombs City Prison, Manhattan, N. Y., submit this petition of grievances and we solicit your attention in this matter.

Grievances

1. We address ourselves to what we feel to be the injustices we suffer in the courtrooms of the Criminal Court and the Supreme Court of Manhattan County;

(a) Many of us have been denied preliminary hearings in Criminal Court;

(b) Those of us who do receive hearings are usually given sham hearings that border on a system of Kangaroo Courts in which we are not given a chance to take the stand in our own behalf, nor are we ever advised of our rights by the judges at these so-called hearings;

(c) Many of use find ourselves the victims of excessive bails;

(d) Many of us are brought to court and wind up sitting in the detention cells all day and never get to enter the courtroom (This is generally regarded as a move by the people's representative, the district attorney, to wear the man down so that he will be willing to plead guilty);

Exhibit "B" Annexed to Complaint

(e) Many of have submitted writs and petitions to the court asking that the court rectify some error in procedure. We are denied hearings on our writs even though constitutional questions are involved, or, as is usually the case, the writs go unanswered;

(f) Many of us have been waiting for trial dates for an average of eight months to a year or more and our motions for speedy trials are ignored by the courts.

In conclusion of grievance No. 1, it appears that each and every one of us has been denied some basic constitutional right and we stand before the public at large guilty until we can prove ourselves innocent.

2. In relation to grievance No. 1, in most instances we find that the Legal Aid Society aids and abets the incursions and abuses of our rights in the courtrooms. It is the order of the day for the assigned legal aid, on first meeting his client to open the conversation by saying "I suggest that you take a guilty plea," or "I can speak to the District Attorney and get you (this or that) plea." All this without even asking the client in confidence whether he is in fact guilty of the charge. Those of us who have to rely on the Legal Aid Society to represent us find that though they are paid by the state they will not thoroughly investigate the case or subpoena witnesses in our behalf.

In conclusion of grievance No. 2, we feel that under the present system of the courts that we cannot receive any justice and can only suffer threat, coercion and intimidation disguised as law and justice.

Exhibit "B" Annexed to Complaint

3. We now address ourselves to the physical brutality perpetrated by the officials of Tombs Prison against the inmates thereof. This unnecessary brutality has been largely directed against the black and Puerto Rican inmate population. We vehemently denounce this policy of inhumane treatment.

It is common practice for an inmate to be singled out by some Correction Department employe because he did not hear the officer call his name or because the officer did not like the way this or that inmate looked or because of the manner in which the inmate walked or because the officer brings the turmoil of his own personal problems to work with him, and together with other officers, beat the defenseless inmate into unconsciousness, often injuring him for life physically and mentally or both.

The attacks on the inmates are made by officers wielding blackjack, night sticks, fists and feet. After such attacks it is the policy of the officials in collusion with any one of the institution doctors to fix up fake accident reports to cover up the mayhem that has been committed against the person of the inmate.

We reject all official denials that such things do not happen here as there are those of us who have experienced these sadistic attacks and there are witnesses to verify the fact. It is common knowledge by thoughtful men that "Not one leaf of a tree could turn yellow without the silent knowledge and consent of the tree itself."

That is in relation to the officers who daily brutalize and maim us. These act would not and could not happen without the knowledge and consent of the Commissioner of

Correction, the Assistant Commissioner of Correction, the Warden of Tombs Prison, the Deputy Wardens of Tombs Prison, and the Captains of Tombs Prison.

In conclusion of grievance No. 3, We DEMAND that this policy of physical brutality cease immediately.

4. In relation to grievance No. 3, it has come to our attention that our wives, sisters and mothers have been variously insulted and indecently proposed to by the officers of Tombs Prison when they come to visit us. We demand that this abuse to our women be discontinued.

5. We now address ourselves to the food which we are fed. Molded bread; only enough „ 'y to put on one slice of bread; rotten potatoes, always half-cooked; powdered eggs with the consistency of overcooked tapioca; not enough deserts; the food is generally unpalatable without seasoning and not fit for human consumption. In conclusion to this grievance we demand better prepared food.

6. Because many of us are feel that we cannot get a fair shake between the Legal Aid Society and the courts, we find that we must prepare our own briefs and motions. This institution has law looks in its library, but the institution does not allow the inmates to use the law book for reference data. In conclusion of grievance No. 6 we demand use of the law books in the library.

7. This entire institution is ridden with body lice, roaches, rats and mice and we demand that adequate measures be taken to alleviate this condition.

Exhibit "B" Annexed to Complaint

8. As has been stated, a great majority of the men here spend about an average of eight months to a year here with their cases and a good portion of them, due to circumstances, have no other clothes to wear save those which they had when they entered the institution. We feel that the institution should supply each inmate with adequate clothing and facilities to maintain the upkeep of their civilian attire.

9. We ask that there be an improvement in the medical staff here at the institution. As the matter now stands, the doctors prescribe an assortment of pills for every individual ailment without adequate diagnosis of the patients' complaint. The doctors even relegate responsibility by having an institution nurse listen to prisoners complain of ailments and prescribe pills for that ailment contrary to standard medical practice and the law in that regard.

10. We ask that there be no repercussions against any of the inmates involved in this protest, and that each and every point of the above list of grievances be given your personal attention. We also ask that this entire petition, without deletion, be made public by giving access to it to the press.

IN CONCLUSION

We are firm in our resolve and we demand, as human beings the dignity and justice that is due to us by right of our birth. We do not know how the present system of brutality and dehumanization and injustice has been allowed to be perpetuated in this day of enlightenment, but

we are the living proof of its existence and we cannot allow it to continue.

The manner in which we chose to express our grievances is admittedly dramatic, but it is not as dramatic and shocking as the conditions under which society has forced us to live. We are indignant and so, too, should the people of society be indignant.

The taxpayer, who, just happens to be our mothers, fathers, sisters, brothers, sons and daughters should be made aware of how their tax dollars are being spent to deny their sons, brothers, fathers, and uncles justice, equality and dignity.

Respectfully submitted

We Are One People
the Inmates of the 9th
Floor Tombs Prison.

Answer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

Defendants, GEORGE F. MCGRATH, ARTHUR SINGERMAN, and JOHN V. LINDSAY, by their attorney, J. LEE RANKIN, Corporation Counsel of the City of New York, for their answer to the complaint herein:

First: Deny the allegations of paragraphs 1, 2, 9 and 10.

Second: Deny any knowledge or information sufficient to form a belief as to the allegations of paragraphs 11, 12, 13, 14 and 15.

Third: Deny the allegations of paragraph 16.

Fourth: Deny the allegations of paragraph 17 and respectfully refer the Court to Chapter 25 of the New York City Charter for the full text and legal effect thereof, except admit that defendant McGrath has been Commissioner of Correction of the City of New York, since 1966 and that his office and post office address is 100 Centre Street, New York, New York.

Fifth: Deny the allegations of paragraph 18 and respectfully refer the Court to N. Y. Correction Laws §§ 500-K, 139, 140 and N. Y. State Correction Commission Rules and

Regulations § 100.15 for the full text and legal effect thereof, except admit that defendant Singerman was Warden of the Manhattan House of Detention for Men, on a temporary assignment, from August 11, 1970 to September 11, 1970, and that prior to that he was Warden of the Bronx House of Detention for Men.

Sixth: Deny the allegations of paragraph 19 and respectfully refer the Court to Chapter 1 of the New York City Charter for the full text and legal effect thereof, except admit that defendant Lindsay has been Mayor of the City of New York since January, 1966 and that his office and post office address is City Hall, New York, New York.

Seventh: Deny any knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 20, 21 and 22.

Eighth: Deny the allegations of paragraph 23.

Ninth: Deny the allegations of paragraph 24(a) except admit that in the beginning of August the Manhattan House of Detention for Men housed over 1900 prisoners and that it has an official single cell occupancy of 932 inmates.

Tenth: Admit the allegations of paragraph 24(b) and allege that at present no cell is occupied by three prisoners and many are occupied by one.

Eleventh: Deny the allegations of paragraph 24(c).

Answer

Twelfth: Deny the allegations of paragraph 24(d) except admit that the corridor is approximately sixty feet by seven feet and has eleven small tables and allege that it is unusual for there to be sixty to eighty or more prisoners in such corridor during the "lock-out" period.

Thirteenth: Deny the allegations of paragraphs 24(e), 25(a), (b), (c), (d), (e), (f), (g) and 26(a).

Fourteenth: Deny the allegations of paragraph 26(b) except admit that some windows not used for ventilation were sealed and alleged that this building was not designed for window ventilation and has an internal blower and register system.

Fifteenth: Deny the allegations of paragraphs 26(c), (d), 27(a), (b), (c), (d), 28(a), (b), (c), 29(a), (b), (c), (d), 30(a), (b), (c), (d), 31(a), (b), (c), (d), 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46.

For a First Defense, It Is Alleged:

Sixteenth: That pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, this court lacks jurisdiction over the subject matter of the complaint herein.

For a Second Defense, It Is Alleged:

Seventeenth: That pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the complaint herein fails to state a claim upon which relief can be granted.

WHEREFORE, defendants, McGrath, Singerman and Lindsay pray that the complaint herein be dismissed and for such other and different relief as to this Court may appear just and proper.

Dated: New York, N. Y.
April 28, 1971

J. LEE RANKIN
Corporation Counsel
Attorney for Defendants, McGrath, Singerman and Lindsay
Office & P. O. Address
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LEONARD BERNIKOW
Assistant Corporation Counsel

Consent Decree Filed in District Court
August 2, 1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

ORDER

Plaintiffs above-named having brought suit in the United States District Court for the Southern District of New York on behalf of all inmates of the Manhattan House of Detention for Men, against Benjamin J. Malcolm, Commissioner of Correction of the City of New York; John V. Lindsay, Mayor of the City of New York; Peter Schaefer, Deputy Warden-in-Command, Manhattan House of Detention for Men; and Nelson Rockefeller, Governor of the State of New York; Russell G. Oswald, Commissioner of Correctional Services of the State of New York; and Harold A. Stevens, Presiding Justice, New York State Supreme Court, Appellate Division, First Department; and

The complaint having alleged that conditions and practices in the Manhattan House of Detention for Men deprive them of their rights to due process of law, to equal protection of the laws, and to be free from cruel and unusual punishment, guaranteed by the United States Constitution; and

The defendants Malcolm, Lindsay, and Schaefer having denied that conditions and practices in the Manhattan House of Detention for Men violate plaintiffs' rights under

the United States Constitution, but desiring to improve conditions in said institution, and believing that it is in the best interests of all the parties that the claims contained in paragraphs 24, 25, 26(b), 28 [except for the allegations that plaintiffs are denied the specific rights referred to in sub-paragraph (a), other than the right to call witnesses in one's own behalf], 29 and 30 [except for the allegations that plaintiffs receive insufficient physical exercise] of the complaint be resolved without further litigation or trial; and

Counsel for plaintiffs and defendants Malcolm, Lindsay and Schaefer having entered into stipulations dated January 16, 1973 and January 24, 1973, settling the above-enumerated claims; and

The Court having ordered that notice of the stipulations of settlement be distributed throughout the Tombs, and having received and considered letters from plaintiffs to the Court in response to said notice; and

The Court having determined that there is no just reason for the delay of entry of final judgment of the settled claims, as hereinafter set forth,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants Malcolm, Lindsay and Schaefer shall:

1. Reduce the population of the Manhattan House of Detention for Men permanently so that as of the date of entry of this order, no more than one inmate shall be housed in any cell, subject to the following conditions:

A. Temporary doubling will be allowed in cells only when, because of cell breakage due to normal wear

and tear, negligence, or vandalism, existing cells cannot be used, or because of other extreme emergency.

B. Such temporary doubling in cells will continue only for so long a time, not to exceed sixty days for the repair of any individual cell, as is required to repair the broken cells or to deal with the emergency. All repairs shall be made as quickly as possible.

C. In the event of permanent doubling for administrative or medical reasons, cells with a floor area of at least twice the floor area of existing cells will be provided.

2. Undertake and complete renovations of the Manhattan House of Detention for Men as follows:

A. The roof recreation area shall be enclosed for year-round inmate use no later than December 31, 1973.

B. Plans for renovation of the roof shall be submitted to counsel for plaintiffs upon entry of this order.

C. Cells will be removed from one-half of the eighth floor and one-half of the fifth floor to provide additional space for inmate programs and quiet recreation no later than June 30, 1974.

D. Plans for renovation of the fifth and eighth floors shall be submitted to plaintiffs' counsel upon entry of this order.

E. The basement recreation area shall be used for inmate recreation upon entry of this order.

F. The entire institution shall be re-wired and the existing lights replaced with fluorescent fixtures no later than March 1, 1974.

G. All windows which have been welded shut on inmate housing floors shall be opened, and security screening installed for each such window, no later than August 1, 1973.

H. Either party may petition the Court for either shortening or lengthening the time limits in this section of the order on the basis of the plans submitted to the plaintiffs' counsel or on the basis of unforseen and unavoidable delay in the construction.

3. Make every effort to keep the Manhattan House of Detention for Men in a sanitary condition, and to that end take the following actions:

A. The New York City Department of Health shall be required to inspect the Manhattan House of Detention for Men monthly, and to issue a report on the sanitary conditions of the Manhattan House of Detention for Men for six months following the entry of this order.

B. Said reports shall include a list of all health and sanitation violations observed by the inspector, time limits for the elimination of said violations whenever appropriate, and recommendations as to methods for this elimination.

C. Said reports shall be furnished to counsel for all parties, and to the Court.

D. Defendants Malcolm, Lindsay, and Schaefer shall abide by the rules and regulations of the Department of Health in the operation of the Manhattan House of Detention for Men, and shall follow all recommendations and comply with all time limits in said reports, except where so doing would constitute a danger to the safety and security of the institution.

E. At the end of the six-month period, any party may, for good cause, petition the Court for an additional period of monthly inspections by the Department of Health.

4. Submit a plan to the Court, on or before September 30, 1973, for the provision of an institutional means of laundering inmate clothing. In the event that said plan is unacceptable to plaintiffs, plaintiffs shall have the right fully to litigate this issue.

5. Conduct all institutional disciplinary proceedings at the Manhattan House of Detention for Men according to the disciplinary rules in existence at the time. In order to insure that these rules are followed by all concerned, the following steps shall be taken:

A. The New York City Board of Correction shall, for a period of six months from the entry of this order, monitor disciplinary hearings at the Manhattan House of Detention for Men.

B. For the first two months of this period a representative of the Board shall observe all disciplinary hearings.

C. For the remaining four months, the Board need not observe all such hearings, but shall observe a representative sample thereof, and shall interview inmates in punitive segregation.

D. The Department of Correction shall give the Board at least twenty minutes' notice before conducting any disciplinary hearing.

E. The Board shall make monthly reports to the Court and to counsel on compliance with disciplinary rules at the Manhattan House of Detention for Men.

F. At the end of the six-month period, any party may request, for good cause, that further monitoring of disciplinary hearings be conducted by the Board.

6. Institute an inmate council at the Manhattan House of Detention for Men, upon entry of this order, as follows:

A. The council shall consist of elected inmate representatives from each housing floor and of a permanent representative of the New York City Board of Correction.

B. The council shall meet at least once every two weeks.

C. The council shall be empowered to discuss any and all matters of interest and concern to the inmates of the Manhattan House of Detention for Men, and to present any and all requests, suggestions, and grievances to the commanding officer of the Manhattan House of Detention for Men and to the Commissioner of Correction.

D. Detailed plans for the operation of the council shall be submitted to the Court and to counsel for plaintiffs upon entry of this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants Lindsay, Malcolm and Schaefer shall take the following steps to improve medical and psychiatric services at the Manhattan House of Detention for Men (MHDM):

1. The major clinical programs at MHDM, including medical services, psychiatric services, and the dental program, shall be drawn together within a single organizational framework headed by one individual as of the date of entry of this order.

2. The receiving area of MHDM shall be renovated as follows:

A. Two of the existing showers shall be converted into individual examination cubicles.

B. X-ray equipment shall be installed in the receiving area.

3. Upon admission to MHDM each inmate shall have a medical examination, including X-ray when X-ray equipment has been installed. Upon the basis of this examination, an inmate will be further assigned as follows:

A. Inmates who are currently addicted to narcotics shall, if they consent, be immediately assigned to the methadone detoxification program.

B. Inmates who are homosexuals may be immediately assigned to the area of MHDM reserved for homosexuals.

C. Inmates with psychiatric problems shall be immediately assigned to the full-time psychiatric program at MHDM.

D. All other inmates shall be placed on the reception ward for a period of forty-eight hours prior to assignment to a housing floor.

E. The reception ward shall have a separate twenty-four hour medical-psychiatric staff who shall take inmates' medical and psychiatric histories and conduct medical examinations and laboratory tests.

F. While on the reception ward, each inmate shall be interviewed by a member of the social services staff.

G. The reception floor shall be in operation as described as of the date of entry of this order.

4. A formal affiliation shall be sought with Bellevue Hospital, whereby residents would be regularly assigned to MHDM on a rotating basis, and residents training in specialities (including an orthopedist, a urologist, an ophthalmologist, an internist, and an otolaryngologist) would be utilized to provide consultative services. In the event that Bellevue Hospital will not agree to such an affiliation, other means will be sought to provide specialty care in MHDM.

5. The Department of Correction will study whether, upon completion of the renovation of the fifth and eighth floors, areas can be set aside on each of those floors for use for medical or psychiatric consultation or other appropriate medical or psychiatric services.

6. On or before December 31, 1973, a special housing area shall be set aside on one of the housing floors for inmates with chronic medical conditions requiring routine medication.

7. As of the date of entry of this order, a new procedure for daily sick call shall be adopted, as follows:

A. All inmates signing up for sick call shall form a line as directed by the officer when the nurse comes on duty on the floor.

B. The nurse shall speak to each inmate who has signed up for sick call concerning his medical or phychiatric problem.

C. When the nurse determines it is necessary, she may do any or all of the following:

(1) Take an inmate's temperature.

(2) Examine an inmate's throat.

(3) Conduct other appropriate examination procedures.

(4) Give the inmate aspirin or cold capsules.

D. The nurse shall refer all inmates who require further medical or psychiatric examination or care to the clinic.

E. If this procedure is discovered not to be practicable after it is first put into operation, it shall be tried again when the medication ward is set up for inmates with chronic medical problems, and again when the population at MHDM is reduced to one inmate per cell.

8. On or before December 31, 1973, the Health Services Administration shall have a departmental pharmacist who shall be available for consultation at all city correctional institutions, including MHDM, on a circulating basis.

9. As of the date of entry of this order, specimens for all regular laboratory tests required for inmates shall be taken at MHDM and sent to the New York City laboratories for analysis.

10. The capacity of the infirmary at MHDM shall be reduced from eighteen to sixteen beds. Five beds shall be reserved for short-term emergency psychiatric care when no other facility is available.

11. A career ladder shall be established, with three salary levels, for medical and psychiatric paraprofessionals at MHDM.

12. A continuing program of training of all medical and psychiatric personnel shall be instituted, and shall include regular staff meetings and meetings with correctional personnel.

13. As of the date of entry of this order, a plan for improved procedures for a centralized and comprehensive method of handling inmate medical records shall be prepared and submitted to the Court and to counsel.

14. Continuing frequent and in-depth evaluations of the clinical program at MHDM shall be performed by the Quality of Care Committee.

15. A long-range master plan survey undertaken on a system-wide basis to determine needs and priorities for the Prison Health Services System shall be completed and submitted to the Court and to counsel as of the date of entry of this order, or as soon as practicable thereafter but in no event later than August 31, 1973.

16. The City defendants shall submit detailed reports on the implementation of this order to the Court and to counsel no later than August 31, 1973 and on December 31, 1973. After December 31, 1973, plaintiffs may request the Court, for good cause, to order the defendants to submit further reports on the implementation of this order.

At any time the defendants may, for good cause, petition the Court for an extension of any of the above deadlines. If any dispute should arise as to compliance with any of the terms of this order, the parties shall bring the dispute before the Court for resolution prior to the institution of any contempt proceedings.

MORRIS E. LASKER
United States District Judge

Dated: New York, New York
August 2nd, 1973.

Opinion

(Filed in U. S. District Court January 8, 1974)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

70 Civ. 3962

JAMES RHEM, ROBERT FREELY, LEO ROBINSON, and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; PETER SCHAEFER, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; and MALCOLM WILSON, Governor, State of New York; OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

APPEARANCES:

THE LEGAL AID SOCIETY
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New York, New York 10003
Attorneys for Plaintiffs

Of Counsel: WILLIAM E. HELLERSTEIN, Esq.
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Of Counsel: JOHN NACHAZEL, Esq.

LOUIS J. LEFKOWITZ, Esq.
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New York, New York 10047
Attorneys for Defendants Peter Preiser, Malcolm Wilson and Owen McGivern

Of Counsel: DAVID BERMAN, Esq.

Opinion

LASKER, D.J.

Sixty-two years ago, Winston Churchill, then Home Secretary of Great Britain, observed with characteristic eloquence that "[t]he mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country". This suit raises most serious issues relating to one element of the criminal process—the constitutionality of the conditions under which persons are held in pre-trial custody by the City of New York.

Plaintiffs are unconvicted detainees housed in the Manhattan House of Detention for Men (MHD), popularly but forbiddingly known as the "Tombs". They bring this civil rights action claiming that numerous practices and physical conditions at MHD deprive them of rights under the First, Fifth, Sixth, Eighth and Fourteenth Amendments. Their suit under 42 U.S.C. §1983 and 28 U.S.C. §2201 on behalf of all persons confined at MHD originally complained of overcrowding, unsanitary conditions, lack of light and air, excessive noise, mistreatment by guards, arbitrary disciplinary procedures, inadequate medical care, lack of recreation, and restrictions on visiting and mail.

On October 26, 1970, the case was declared a class action. On March 17, 1971, Judge Mansfield denied the City's motion to dismiss, and granted a preliminary injunction against the City ordering the Department of Correction to adopt, publish and distribute to all inmates rules governing inmate behavior and other aspects of inmate life and prohibiting the Department from interfering with private consultations between inmates and their attorneys in cases in which the Commissioner or his staff were parties.

Opinion

On December 16, 1971, a motion by defendants Rockefeller, Oswald and Stevens (the State defendants) to dismiss as to them was denied.

In the latter months of 1972 and January, 1973, constructive negotiations took place between the parties, as the result of which the plaintiffs and the City entered into a stipulation of settlement as to the issues relating to overcrowding, unsanitary conditions, and inadequate medical care. A consent decree enforcing the stipulation was entered August 2, 1973. The remaining issues were tried to the court during several trial weeks.

Plaintiffs' witnesses included four plaintiff detainees; John Anderson, Warden of Northumberland County Prison in Sunbury, Pennsylvania; Donald Goff, General Secretary of the Correctional Association of New York; William vanden Heuvel, then Chairman of the New York City Board of Correction; Dr. Karl Menninger, Chairman of the Board of the Menninger Foundation, Topeka, Kansas; Dr. Augustus F. Kinzel, formerly staff psychiatrist at the United States Medical Center for Federal prisoners at Springfield, Missouri; Dr. Stephen Teich, Director of Mental Health at MHD, and Richard Botshon, Photographer.[1]

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[1] John Anderson has been Warden at Northumberland since July 1972. Before that he served for a year as Project Director for Correctional Facility Study for ten counties in Central Pennsylvania, and prior to that was employed by the Federal Bureau of Prisons as an Inspector for the Northeastern United States in non-Federal institutions which housed Federal prisoners. He worked for the Federal Government for 23 years starting as a Correctional Officer at the Correctional Institution in Danbury, then as a Lieutenant at the Federal Detention Center in New York City; later at the United States Correctional Facility, Sandstone, Minnesota; finally

Defense witnesses included: Hon. Benjamin J. Malcolm, Commissioner, New York City Department of Correction; Joseph D'Elia, Director of Operations of the City Depart-

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as Senior Correctional Inspector in the Jail Inspection Service of the United States Bureau of Prisons in Washington. He has visited the Tombs on numerous occasions in recent years, at least once a year to determine whether conditions there were suitable for the housing of Federal prisoners.

Donald Goff is General Secretary of the Correctional Association of New York, which was formed by an Act of the Legislature in 1844 for the purpose of improving the administration of criminal justice in the State with particularly emphasis upon institutions and to report annually to the Legislature on the status of criminal justice in the State. Before taking his present position, Mr. Goff was Associate General Secretary of both the Correctional Association of New York and the American Correctional Association. For six years earlier, he was Chief of the Bureau of Corrections for the State of New Jersey with responsibilities for the administration of the correctional institutions of the State, as well as jail lockup inspection for the State. Previously, he was Director of Classification and Education for the Bureau of Corrections of the State of New Jersey. He is presently a non-governmental organization representative to the United Nations acting as a consultant to the Social Defense Division. He has been a delegate to various international conferences on the prevention of crime in the years 1960, 1965 and 1970.

Dr. Karl Menninger is nationally known as a psychiatrist, author, teacher, lecturer, with particular interest in the field of penology and criminology. He has acted as a consultant to the Federal Bureau of Prisons, the President's Task Force on Prisoner Rehabilitation in 1969, the Veterans Administration, United States Office of Vocational Rehabilitation, etc. His credentials are listed in substantial detail in Exhibit 6.

Dr. Augustus F. Kinzel is a psychiatrist in private practice and an instructor in psychiatry at Columbia University, graduate of the Pennsylvania Medical School in 1962, certified by the American Board of Psychiatry and Neurology in 1971, a graduate of the Columbia Psychoanalytic Clinic for Training and Research; member of the subcommittee on prisons of the American Psychiatric Association. He served as Staff Psychiatrist at the United States Medical Center for Prisoners in Springfield, Missouri from 1966

ment of Corrections; Peter M. Schaefer, then Deputy Warden-In-Command of MHD; Professor Hyman H. A. Cooper, Deputy Director of the Criminal Law Education & Research Center of the New York University School of Law and (by deposition) Louis S. Aytch, Superintendent of Prisons for the City of Philadelphia.[2]

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to 1968, and was the Chief Psychiatrist for the maximum security unit there and consultant to the Prison Discipline Committee.

Dr. Stephen Teich is a psychiatrist and became Director of Mental Health at MHD in 1972. As Director, he is in charge of all mental health services provided to the inmates. He received his medical degree in 1967 from the Downstate Medical Center and served three years as psychiatric resident at Kings County Hospital after interning at Montefiore Hospital. At Kings County Hospital, he treated inmates in the Kings County Prison Ward.

The four plaintiff detainees who testified were:

Bert Scott, 28 years old, in custody at MHD on possession of drugs and weapon, and robbery. Bail was set at $4,500. bond, $1,000. cash. Scott worked as a laborer in a printing shop before his arrest. He has previously been fined for unauthorizd use of a motor vehicle and had served a federal sentence for possession of marijuana and a state sentence for possession of drugs.

Russell Meade—at the time of trial he had been detained at MHD for about 15 months on charges of robbery and attempted murder. He had no prior conviction and had been a salesman in a record store prior to his arrest. His bail was set at $25,000.

Leo Robinson was held at MHD facing charges of robbery. Bail had been set for $3500 bond or $500. cash. He had been held at MHD for 7 months prior to testifying. He had previously been convicted for theft of interstate shipment, fraudulently accosting and petty larceney.

William Hood being held at MHD on charges of assault in the first degree. Prior to his arrest he was working as a truck driver. He served in the Army in 1963 and 1964 and received a medical discharge. Originally he was held in bail of $100,000. which, after 3 months in custody at MHD, was ultimately reduced to $250.

[2] Commissioner Malcolm has been in service of the City since 1948. For 20 years he was a parole officer rising to the ranks of Deputy Chief Parole Officer, at the end of that period. For 3½ years he was an assistant director of Labor Relations for the City of New York and for a year and a half served as Deputy Com-

The court toured MHD on August 2, 1973 and February 26, 1973 in the company of counsel, some members of the plaintiff class, and officials of MHD. The court also visited the Federal Detention Center in New York City on February 8, 1973, in the company of counsel. On that occasion Warden Louis Gengler of the Federal Detention Center testified as a witness called by the court.

MHD is a twelve floor structure forming part of a complex that includes the Criminal Courts of the City of New York and the offices of the District Attorney of New York County. The complex is located on Centre Street in the heart of Manhattan's Civic Center, heavily populated in the

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missioner of the Department of Corrections. Since January 19, 1972, he has been the Commissioner.

Joseph D'Elia has held the position of Director of Operations of the Department of Corrections for two years. He has served in the Department itself for 21 years as Correction Officer, Captain, Assistant Deputy Warden and Warden. He is thoroughly acquainted with the workings of the Department and its institutional components.

Peter M. Schaefer has been employed in the Department of Corrections for more than 22 years and is presently the Warden at MHD. At the time of trial he was the Deputy Warden in Command.

Professor H. H. Anthony Cooper received an LL.B. at the University of London in 1961 and a LL.M. in Criminal Justice at New York University in 1972. He has lectured in Law at the City of Liverpool College of Commerce and at the Universidad Nacional Mayor de San Marcos Lima, Peru. He served as Adjunct Professor of Law at New York University. His detailed credentials are set forth in Exhibit E.

Louis S. Aytch started as a social worker for the Homesburg Prison in 1956. He became a supervisor of social work in 1959, Associate Warden of the House of Corrections in 1965 and Warden in 1970. In February of 1972, he was appointed Superintendent of Prisons for the City of Philadelphia.

daytime and deserted at night. It consumes all of the city block on which it is built, leaving no open space or outdoor area.

The official capacity of MHD (effective August, 1971) is 902. As of October 6, 1972, its population was 1301. (Stipulation of Facts # 8 and 9.) Pursuant to the consent decree, the Department is now housing only one detainee to a cell (of which there are 808). There are approximately 100 convicted misdemeanants housed on a dormitory floor, for a total authorized population of something over 900.

Although all the plaintiff class and 80% of persons housed at MHD are unconvicted detainees, (the remainder being sentenced misdemeanants who have jobs at MHD) the building is a maximum security institution in every sense. One may surmise that its fortress-like character is the result partly of the penological philosophy in vogue at the time of its construction and partly of concern that its location was believed to provide an easy opportunity for an escapee to melt into the city population during the daytime, or evaporate into the dark of city streets at night. In fact, only one escape has occurred since the institution opened for business some forty years ago. There is no evidence whether this is the result of its maximum security features, or whether it proves that they are not necessary.

The character of the structure is of more than passing narrative interest, since many of the conditions which form the issues of this case flow from that character; and the claimed need for a maximum security institution as well as the given fact of the building's character form the basis of defendants' justification of those conditions.

Opinion

Prisoners are housed in two-storied units of rectangular tiers of cells, each tier surrounding an unwindowed central "lock-out" area. The lock-out area derives its name from the fact that when inmates are allowed to leave their cells, they are prevented, or "locked out" *from* the cells. Each cell is, of course, only one floor high. But the lock-out area rises the full two stories from the bottom of the lower to the ceiling of the higher cells. A catwalk-gallery, used by prison guards, runs along the inside of the lock-out area, at the floor level of the upper deck of cells, allowing guards to see both the upper and lower decks. Each housing floor contains two such units (four cell tiers in all) divided by a hallway which gives access to the units on east and west, and to the elevators on the south. Except for the exterior walls of the building, constructed exclusively of masonry, some spaces of translucent (but not transparent) glass block and occasional high-set transparent windows, partitions on the housing floors consist solely of steel doors or gates. That is, each cell is secured by a steel barred door as is every access to the lock-out area.

Some critical issues presented flow from the maximum security nature of the institution. These include allegations of excessive "lock-in" (in cells), undue restrictions on the length, conditions and number of visits, grossly inadequate opportunity for exercise and recreation and limitations on correspondence and access to reading matter. Others, such as intolerable noise, inadequate ventilation, severe heat in summer and cold in winter and an absence of transparent windows are largely functions of the building's architectural structure (although to some extent they are the result of its maximum security features). Still

others are unrelated either to considerations of security or the nature of the building, such as mistreatment by officers —said to be caused by overworking the guards: a fiscal question—and a disciplinary procedure which is claimed to violate due process and which is the child of administrative policy only.

To understand the significance of the facts, and the necessity of reviewing them quite fully, it is worthwhile sketching the major legal arguments at this point, although they are treated in detail later in this opinion. Plaintiffs argue that their incarceration at MHD (1) violates due process because, as unconvicted detainees, they are entitled to but are not being held under the least restrictive conditions necessary to assure the sole justification of their imprisonment: appearance at trial; (2) violates the equal protection clause because, although they are unconvicted detainees, they are held in undeniably harsher conditions than convicted prisoners and (3) violates the Eighth Amendment, because those conditions singly or collectively constitute cruel and unusual punishment. Defendants' answer, as we have earlier indicated, is that it is necessary that plaintiffs be held in maximum security, and that that necessity and the given character of MHD constitutionally justify existing conditions.

We treat separately the facts raised by each issue.

(1) *Excessive Lock-In.*

Most cells are 4′ 10″ wide by 7′ 11″ deep, (Stipulation of Facts #2), or about 5500 square inches. The American Correctional Association Manual of Correctional Standards (1971) (ACA Manual) specifies minimum cell size of 50

square feet (7200 square inches).[3] Inmates are locked in the cells 16 hours a day. This, of course, does not include the time locked in the "lock-out" area of 66½ hours per week, excluding participation in such programs as are offered (Stipulation of Facts #20). The lock-out areas are a maximum of 68′ x 9′. A number are significantly smaller (Stipulation of Facts #16). Plaintiffs vigorously challenge the necessity of such extended lock-in hours.

At trial, Donald Goff, General Secretary of the American Correctional Association (ACA) testified (Transcript 600) that, except for a range of 20-40% of detainees whose characteristics or offense might require maximum security confinement, it is not necessary to keep detainee-inmates in cells at all (Transcript 613). His views are supported by the ACA Manual which states (at 48) that "[i]nside security cells [such as those at MHD], the most expensive type of construction, are necessary only for prisoners requiring maximum security, who in the average jail rarely exceed 20% of the population". It is true that the manual qualifies this statement by commenting that "in the large metropolitan jail with a high count and a turnover too rapid to allow time for classification of inmates it may be necessary to provide a higher proportion of maximum security housing", but, as we shall see, the question of whether a classification system (which does not presently exist) is not a workable possibility at MHD is very much at issue in this case.

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[3] The consent decree requires that each cell be occupied by only one man except in particular circumstances two men may occupy a double size cell.

Goff stated further that it is not necessary in minimum or medium security facilities to lock in detainees more than for short periods (20 minutes or so) to count heads (Transcript 612-613).

William vanden Heuvel, then Chairman of the City Board of Corrections criticized the inflexibility of the lock-in policy. He believed that detainees could safely be allowed greater freedom of movement after problem inmates had been identified through classification (Transcript 988, 1021-24).

Defendants' witness, Louis Aytch, Superintendent of Philadelphia's City Prisons, testified that in Philadelphia detainees are permitted to remain out of their cells most of the day (Aytch deposition 37-8).

Indeed, the City admits (Exhibit 43) that at the Bronx House of Detention—a sister facility of MHD—whose inmates are also unconvicted detainees facing trial for the same serious range of offenses as inmates at MHD, prisoners enjoy nearly 90 hours weekly out of their cells (compared with 56 at MHD), and that nearly ½ of the prisoners in the Bronx, living in dormitories, are never locked in cells (Transcript 1205). Dormitory arrangements exist also at the Federal House of Detention in New York City, where only a small percentage of detainees, classified for maximum security, are held in cells.

(2) *Visiting Conditions.*

While visits from family, friends (and lawyers) are the most important events of a prisoner's time in custody, in the eyes of MHD's administrators they entail perhaps the most significant threat to the security of the institu-

tion. It is, therefore, not surprising that no issue in this litigation has been more sharply contested than whether current visiting arrangements at MHD are constitutionally justifiable.

Visits occur in special booths under what defendants' post-trial memorandum itself describes as a "rigorous security procedure". Each detainee is separated from his visitor by a steel wall and a pane of bullet proof glass 20" square. The booth is locked from behind on the detainee's side. Voice communication from the detainee's booth to the facing visitor is by sound powered telephone except for a limited number of high fidelity phones (Stipulation of Facts #34). While new electronic instruments and larger booth windows have been ordered by City officials, they had not been received or installed at the time of trial, and in any event, such improvements, as useful as they may be, will leave unresolved the central issue between the parties.

Non-contact booth visits are not unknown elsewhere; but it is significant to note that detainees in the Federal House of Detention in New York City, and the Westchester (N.Y.) County jail are accorded contact visits as are convicted prisoners in all New York State correctional facilities. (Deposition of Louis Gengler, Warden, New York City Federal Detention Center, *passim;* Exhibit 13, p. 18; Stipulation re New York State Practices, Paragraph 1.)

The impact of deprivation of contact visits, and its psychological importance is real. The limitations resulting from the booth system are exacerbated by the frequent non-function of the telephone instruments, and the noise arising from the physical arrangement of many contiguous

booths occupied simultaneously. As Clayton Williams, a detainee testified:

> "When you visit in the old booths, the row of them, everybody has a defective phone and so the noise is consistent. Every inmate is yelling, you know, and it's hard to hear above the yelling from the guy next to you or either side of you." (Transcript 1053)

The time taken to find a useable booth has frequently cut deeply into the 30 minutes allowed per visit (Transcript 760-61; 815-17; 1053-4). Inmates must stand on tiptoe to see a visitor of short stature through the high window (Transcript 95-6, 813).

Typical of inmate reaction to such truncated experiences are descriptions (Transcript 1051-5) by an inmate (whose daughter and sisters visited him for the first time in seven years) of loneliness after a visit is over, as compared to visits at Sing Sing Prison (now Ossining Correctional Institution), where contact visits were such that "you don't feel isolated", (Transcript 1056-7) or "bitter sweet" as to a wife's visit (Transcript 819-20). Self-serving as these declarations might be considered in ordinary litigation, they bore a stamp of candor and straightness in the testimony here; and however subjective the testimony of inmate witnesses, it was supported without qualification by expert witnesses and undisputed by defendants.

Dr. Karl Menninger, the psychiatrist of national renown who has studied and written about prison conditions over a long lifetime, deplored non-contact visits as "the most unpleasant and most disturbing detail in the whole prison",

and described them as "a violation of ordinary principles of humanity" (Transcript 859). Indeed, he remarked of booth visits "—it's such a painful sight that I don't stay but a minute or two as a rule. It's a painful thing, your Honor . . . . I feel so sorry for them, so ashamed of myself that I get out of the room" (Transcript 910). In his view, the MHD visiting system deprives an inmate of "what little decency and humanity there is in the care of the prisoner" (Transcript 884). He described the critical value of direct visits: "the most positive experience . . . is going to be the reestablishment of a feeling of contact, of closeness with somebody who has enough love for him to come clear in there to see him" (Transcript 862-63). As Dr. Menninger put it:

> ". . . the one great thing that he [the inmate] can look forward to is the reestablishment, contact, with this world. Because everybody lives constantly with a lot of contacts established, with you, them, with the judge, with the grocer and so forth. These have all been broken for this man."
>
> "Now, this makes for a dangerous state of instability, because without these contacts he can't live psychologically." (Transcript 863)
>
> "All this is interposed into this establishment of this contact, a pane of dirty glass and a dim—in my experience often a nonfunctional, nonfunctioning telephone—I didn't get to test all the telephones over there, but if my experience in other places is any criteria, they don't work. A person goes in and shouts and the poor visitor stands up on his or her tiptoes

> and tries to see him. And he shouts and after a certain amount of frantic effort to establish a piece of communication, they just give it up. . . .
>
> ". . . [i]t breaks that very important human lifeline of contact. . . . " (Transcript 864).

Dr. Menninger's conclusion was that the MHD's visiting system amounted to "dangling a fragment of meat in front of a dog and jerking it away" (Transcript 865).

Menninger contrasted the MHD system with the contact visits which prevail in an equivalent Kansas institution where contact visits have been in effect for ten years without adverse consequence.

He described the advantages and success of the Kansas method this way:

> "I think the result is magnificent. I mean, the prisoner has a contact with—a civilized contact. He can't leave but he can talk, he can ask questions, he can hold a wife's hand, he can have the advantage of tactile and visual and auditory—reestablish contact in all these ways and I think the result has been magnificent." (Transcript 869)
>
> • • • • •
>
> "If you tell the relatives what they can't do, tell the prisoners what they can't do, that's that. We have very few violations of that. Nobody wants to give up a privilege like that." (Transcript 870)

In Menninger's view, any security risks of contact visits can be controlled by careful searching of prisoner and

visitor (Transcript 869-70) and by psychological evaluation which an experienced psychiatrist can easily perform (Transcript 899).

Dr. August F. Kinzel, whose professional experience includes a stint as staff psychiatrist at the only United States medical center for prisoners (at Springfield, Missouri) agreed with Menninger that the MHD's visiting system causes severe prisoner frustration. He pictured it as ". . . like the carrot on the stick that is held in front of the person who can't quite attain it . . ." (Transcript 321). Kinzel told of the positive value of contact visits at Springfield which are open to both pre-trial detainees and sentenced prisoners (Transcript 322-4). Indeed, it was his view that contact visits may even be suitable for detainees classified as violent (Transcript 324-6). As he saw it, contact visits were compatible with security requirements at MHD (Transcript 397-99) and were one of the most important opportunities a prison can provide (Transcript 409).

Dr. Stephen Teich is Director of Mental Health at MHD itself. Even his testimony as a witness for plaintiffs was consistent with that of Menninger and Kinzel. He told of psychological damage to a prisoner who returned from visits ". . . even worse than when he went down because of the separation".

Donald Goff's views were in harmony with those which have been cited. In his opinion, non-contact booth visits are necessary, at most, only for the 20-40% of prisoners who may require maximum security (Transcript 600, 605). He found no reason why detainees should not have the same opportunity for physical contact with their wives and chil-

dren as New York State convicted prisoners (Transcript 606). As he put it:

> "You are reducing tensions . . . you are reducing anxieties; you are reducing frustrations—just to be able to touch somebody; not just to see them but just to be able to touch them." (Transcript 608).

Contact visits are available to all convicted prisoners in New York State adult correctional facilities and detainees at the Federal House of Detention in New York City. While the New York State practice is of particular importance in assessing the validity of plaintiffs' contention that their right to equal protection is violated by treatment more restrictive than that of convicted prisoners, we put it aside for the moment because of the contrast between the MHD's central urban location as compared to the rural setting of New York State prisons. No such contrast exists between MHD and the Federal Detention Center which is located on a downtown Manhattan street adjacent to the West Side Highway. Furthermore, the Federal Center, like MHD—and again in contrast to State prisons—is populated almost exclusively by detainees, not convicted prisoners.

Louis Gengler, an experienced prison administrator who is warden of the Federal Center, testified that visits are his "highest priority" (Gengler, Transcript 18). He regarded contact visits as more "humane" and booth visits as penologically obsolete. He remarked that:

> "It is unbearable for me to go to a visiting room and see a wife talk to her husband through the telephone.

> To our way of thinking, that has gone out a number of years ago." (Gengler Transcript 8-9).

We shall discuss shortly the relationship of contact visits at the Federal Center to the security of the institution. At the moment, it is sufficient to note the practice of allowing contact visits for all inmates and that the practice has been successful. Indeed, it is planned that contact visits will be available to all at the new Federal Detention Center which is under construction as an annex to the United States Court House, located only two city blocks from the MHD itself. Contact visits at the Federal Center are, of course, approved by the United States Bureau of Prisons.

In the summer of 1970, serious riots occurred at the MHD and were widely reported. This suit, indeed, constitutes the effort to secure by law the objectives of the 1970 violence. The New York State Senate Committee on Crime and Correction held hearings on the MHD disturbances and, on October 5, 1970, issued its report (New York Senate Committee Report). Its finding and recommendation on visits included the following (at 38):

> "Another complaint of the inmates is that the visitation booths which separate the inmate from his visitor by thick, plate glass, do not always have telephones that are in working order, thus preventing any communication between the inmate and his visitor. The Committee recommends:
>
> 2. That the Department of Correction make immediate feasibility studies with the objective toward:
>
> b. Making visits to detention prisoners on a face to face basis."

No action has been taken on this recommendation.

Even defendants' witnesses agreed that there are virtues to contact visiting, although as discussed below they believed that such visits were not feasible at MHD and that the advantage to the detainees was outweighed by the threat to institutional security. However, Joseph D'Elia, Director of Operation of the City Department of Corrections, who was the City's principal witness on the subject, admitted that contact visits might reduce prisoner anxiety and prison tension and to that extent increase security at MHD (Transcript 1255).

Aytch, the Philadelphia Superintendent, called by defendants, testified that at the Philadelphia House of Correction "open" visits are allowed to the 900 detainees although actual contact is not permitted.

Former City Commissioner of Correction, George F. McGrath (an original defendant in this case, who was Commissioner at the time of the 1970 riots and at the institution of this litigation), testified (by deposition, June 1971) that the City then had plans for a new MHD (since abandoned) including more open visiting for some of the detainee population, predicated upon an improved classification system, (Exhibit 36, page 62) and that he had opposed allowing children to visit because he concluded it would be harmful for a child to view his father only through the window of a booth "in those obvious prison surroundings". (Exhibit 37, pp. 192-93)

In sum, all the witnesses agreed that booth visits were painful and psychologically harmful to inmates and that contact visits would be beneficial. The sole justification of the system by defense witnesses was that contact visits

are not feasible because of the physical characteristics of the structure, and would constitute a threat to the security of MHD (including the introduction of contraband) since no classification system yet existed at the institution capable of determining which inmates were sufficiently trustworthy to be accorded contact with visitors.

Defense witnesses testified that as a result of the vertical nature (i.e. high rise character) of MHD and its location, there was not enough space within the building to hold contact visits. In particular, they pointed to the facts that contact visits in themselves require greater space than booth visits and that this difficulty would be intensified by the need for an enlarged waiting room (presumably because more persons would take advantage of the opportunity to visit on a contact basis) and a strip search room to search inmates before and after visits.

Furthermore, defendants contend that contact visits are inappropriate at MHD because inmates in its central urban location are "more predisposed to attempt an escape than they would be in a more rural location" (Defendants' Post Trial Memorandum, p. 23), and that detainees awaiting trial tend to be more anxious and likely to take precipitate action than sentenced persons. The defendants claim that the present system is a reasonable balance between the need to minimize security risks and the acknowledged right of the inmates to humane treatment. Finally, defendants argue that it is "impossible" to grant contact visits to some inmates and not to others (Defendants' Post Trial Memorandum, p. 26). In any event, say the defendants, changes in the visiting system should be deferred until the institution is "adequately equipped" to handle them (thereby

implying the possibility of such an event), and in particular until the completion of a study now being conducted by the Department to determine the feasibility of establishing a plan of classification for inmates.

There can be no doubt that the necessity of assuring security must be balanced against the right to humane treatment of prisoners, and that if contact visits are incompatible with that need they must be sacrificed. The critical question is whether the two can coexist. We are persuaded that they can, or that, in any event, the Department has not taken all reasonable steps—which as indicated below it is obligated to do—to determine the feasibility of contact visits at MHD. In reaching this conclusion, we do not suggest that defendants are not concerned with the welfare of the MHD inmates. We recognize that they conscientiously believe that contact visits may not be feasible at MHD, and that the present administration of the Department of Correction is entitled to public thanks for the significant improvement which, in an extraordinarily difficult situation, inordinately complicated by the obsclete and inhumane structure of MHD itself, and severe budget limitations, it has voluntarily achieved. Nevertheless, we cannot agree that even the difficult problem of security at MHD render booth visits the least restrictive alternative available in the circumstances.

The vertical character of MHD is an obstacle, but not an insuperable obstacle, to transportation of inmates for visits. In the first place, inmates are presently being transported adequately. Reasonable adjustments can be made in the number or length of visits if future experience actually demonstrates that the number of visits grows unman-

ageably on a contact visit basis. The experience at the Federal Center, which, also is affected by limited elevator service and stairways, is some evidence that such limitations can be overcome. It is true that the Federal Center is only four stories high, whereas MHD is twelve; but that contrast is misleading, because at MHD inmates are not housed above the eighth floor. In any event, the plans for contact visits at the new Federal Center which will be eleven floors high demonstrate that such verticality need not prevent contact visits.

Space limitations may be a greater difficulty, but again the evidence is not convincing. One method of alleviating space problems might be to spread visiting hours (thereby reducing the number of visits at a given time) rather than concentrate them in the evening. D'Elia agreed that this might be the effect (Transcript 1268). Furthermore, reduction of MHD's population pursuant to the consent decree should reduce the present number of visits.

The evidence also establishes that the risk of introduction of contraband caused by contact visits is controllable. D'Elia conceded that metal detectors can be used to prevent visitors bringing weapons to detainees—much as such detectors are now used regularly in aircraft boarding checks. Strip searches of detainees can, of course, be conducted to discover contraband. Defendants fear that contact visits may permit passage of drugs mouth-to-mouth (Transcript 1242), as apparently has happened on occasion; but such evidence as there was as to this esoteric practice indicated that its rate of occurrence was of marginal significance, and several witnesses testified that it could be easily controlled by watchful guards. In any event,

there is no evidence that the risk is greater than at State prisons or the Federal Center; and at the Department's own Adolescent Remand Shelter on Riker's Island (New York City), where contact visits are permitted for sentenced prisoners and strip searches are made, few instances of passing contraband have been noted. Mouth-to-mouth passage of drugs has been reported there, but the Department has nevertheless continued the contact visit system (Transcript 1266).

The claim that MHD's urban location justifies booth visits is undetermined by experience at other urban institutions, such as Philadelphia and the present New York Federal Center, and by the plan for contact visits at the new center which will be only two city blocks from MHD and, like it, annexed to both a court house and prosecutor's office.

While it may be true that pre-trial detainees are generally in a greater state of anxiety than convicted prisoners, there is simply no evidence in the record that as a consequence they are more precipitate in their actions or more predisposed to attempt escape. Indeed it could well be argued that a detainee would consider escape highly unwise because it would render him subject to imprisonment even if acquitted on the charge for which he was being held, or would seriously lessen the possibility of a satisfactory plea bargain or lengthen the sentence imposed on him for the original crime. Furthermore, experience at other urban institutions fails to support the claim of detainee predisposition to attempt escape.

Whether changes to a contact visit should be deferred until a classification system is installed, is, of course, no

argument against the right to such visits, but is an appropriate factor to be considered as to the terms of any relief which may be granted.

Plaintiffs also contend that MHD's visiting regulations violate their rights, because of restrictions on visiting hours, visiting days, the length of visits and the number of visits.

Before the 1970 riots each detainee was allowed five visits a week (Stipulation of Facts #3), and in recent earlier years an inmate could receive three visitors at a time (Transcript 1058-9). At present, visits are limited to two a week (at 4:30-7:30 P.M.), with a third visit possible by an inmate's child on a day set aside for that purpose. Prisoners are now permitted only one visitor at a time. No visits take place mornings, afternoons or weekends. Visits are limited to thirty minutes, a period which, as indicated above, is often shortened by the search for a booth with an operable telephone.

These limitations contrast markedly with visiting policy at New York State prisons where daily visits are allowed, and where visits normally occur from 9:00 A.M. to 3:30 P.M. Inmates are allowed three visitors at a time at some institutions, four at others. Families traveling long distances, a situation which occurs at MHD when out-of-city defendants are held, (Transcript 818) may be granted permission to visit on successive days. This is not allowed at MHD. At some institutions visits may last an entire day, and the shortest period allowed appears to be two hours on weekends when there is a greater number of visits. When a visiting room becomes overcrowded the duration of visit may have to be curtailed, the visitors who came first being

asked to leave first (all the above from Stipulation of Facts re New York State Correctional practice). Weekend and daytime visits are also allowed at the Federal Center and at the Department's own Brooklyn and Queens institutions visits are allowed both afternoon and evenings.

The ACA Manual states (Exhibit 4 at p. 542), that:

> "Correspondence and visiting privileges can be an important and valuable part of a realistic treatment program".

and that:

> "As a matter of general policy the members of the inmate's family should be permitted and encouraged to maintain close contact with the inmate . . . ".

The Manual recommends that:

> "Ordinarily a visit of less than one hour would not be regarded as adequate."

and that:

> "The prison administrator should not, however, impose restrictions purely to suit the convenience of the institution." (p. 543).

vanden Heuvel pointed out that MHD's practices imposed hardships on visitors who are employed, and prevented daytime visits by mothers whose children are in school and who cannot visit at other times. The Board of Correction has recommended allowing daytime and weekend visits, and its study presenting the recommendations (Exhibit 13) shows, for example, that Los Angeles, Denver,

Chicago, Baltimore, the District of Columbia and Nassau County (New York) jails permit both weekend and daytime visits. The Board's report indicates that nearly 50% of MHD's inmates interviewed had no visitors, and concluded that the inconvenience of visiting hours was a cause of this condition (Exhibit 13, pp. 1, 8-9). Aytch testified that Philadelphia also allows weekend visits (Aytch Deposition, p. 31).

The State Senate Committee Report, issued after the MHD riots, and at a time when five visits a week were permitted, recommended that visiting hours be lengthened. As stated above, visiting hours have not only not been lengthened, rather the number of visiting days has been cut from five to two.

The chief obstacle to enlarging visiting hours and days to allowing a greater number of visitors per inmate appears to be a shortage of staff manpower, as indicated, for example, by Commissioner Malcolm's testimony. The only improvement which the Commissioner plans is to enlarge visiting time from 30 to 45 minutes (Transcript 1210). To his credit, the Commissioner has already alleviated the situation slightly by permitting visits by children of inmates and non-family adults; but these liberalizations, commendable as they are, do not affect the issues before us or explain why visiting opportunities at MHD should be so much more restricted than at comparable institutions; or so far below the level of 1970 arrangements at MHD itself.

We are persuaded that given adequate manpower, the Department could and willingly would meet more acceptable standards of visiting hours and days and numbers of

visitors. We treat the relationship of this fiscal problem to the case below in our discussion of the law.

(3) *Environment: Noise, Ventilation and Heat, Windows:*

Plaintiffs claim that dangerously high noise levels, excessive heat and inadequate ventilation and absence of transparent windows at MHD at least collectively constitute cruel and unusual punishment to those housed there, and in other ways violate their rights. The court's visits to MHD confirm that such conditions do factually exist. The legal consequences of these facts is discussed below.

The present Departmental administration has made some laudable efforts to overcome the conditions criticized, but has by no means succeeded, and is swimming upstream partly because of problems inherent in the nature of the building, and partly because of budgetary limitations imposed on it by the City government.

Noise levels are intolerable. For example, on the eighth floor (a housing floor) a team of experts from the City's Environmental Protection Agency (EPA) which recently studied the situation with sophisticated noise-measuring instruments, found the volume of noise to be at least that of the New York City subways system (Transcript 1018). It must be emphasized that such levels are fairly constant during all waking hours.

The structure, so largely built of steel and concrete, is a natural for noise, a perfect soundbox in itself. As vanden Heuvel put it:

"... almost every acoustical advantage that could be available to lessen or deaden the sound was removed

> and you have steel hitting concrete, hitting solid walls and the cacophony of it is such that it has to be truly destructive to any orientation to institutional life." (Transcript 1017)

The natural disadvantages of the building are exacerbated by the constant opiate use of television and radio, and court visits confirmed van den Heuvel's description of the sound:

> ". . . the television playing against that steel and concrete and radios and a loudspeaker system and the yelling of prisoners who are communicating through blank walls, and the metal utensils, trays, et cetera, cups, that are used for eating . . . ". (Transcript 1017-18)

An inmate testified that:

> "Early in the morning they have . . . emptying of the garbage cans . . . That's the first noise that you hear . . . , the dragging of a stack of garbage cans . . . . . then you have the radios turned on. Then you have the build-up of the voices, the clanking of the doors, and there's a real piercing sound from the trays that we use, the steel trays . . . they would be stacking the trays for the morning meal and it would just be a constant, you know, high pitched clanking." (Transcript 798)

Although inmate witnesses testified to the hardship imposed by noise and that, for example, it caused inmates

to stay up late at night as the only quiet time, or the only time when reading was possible, it is unnecessary to rely on their testimony which was corroborated not only by observations on court visits but by the reactions of non-inmate witnesses.

Warden Anderson found the level of noise exceptionally high even though his professional experience has generally inured him to prison clatter. Dr. Kinzel, testified that on a tour of MHD he and fellow visitors developed severe headaches from the noise. Nor did he believe that population reduction would solve the problem. As he observed:

> "My impression as a non-architect is that it is the kind of building that you could drop a penny in and be the only person in the place and it would make a racket . . .". (Transcript 396)

The effect of such noise levels on the health of inmates cannot be ignored. Kinzel testified that mental health students have established a correlation between high noise levels and irritability (Transcript 316). Dr. Menninger stated that the noise was worse than any of the 150 to 200 jails he has visited and that it was high on the list of damaging psychological effects of confinement at MHD (Transcript 883, 885).

The findings reported by the EPA (Exhibit 12) are, as plaintiffs' memorandum describes them, startling. They establish that hearing loss is a real danger at decibel readings averaging 80dB, and that noise levels should remain 10-15dB below that level to insure safety. Decibel readings at the Center of the eighth floor bridge averaged 83dB, ranged as high as 87dB and never dropped below the danger

point of 80dB. Readings for the tenth floor (then a housing floor) were only a few points lower. The report concluded:

> "Noise exposure levels in the 10th floor detention area are such that long-term exposure to these levels may cause permanent hearing loss. The levels certainly interfere with normal speech conversation and listening and may well cause a number of psychological and physiological deleterious effects." (p. 9E)

Extensive literature from the field of noise control is appended to the report in support of the conclusion. The decibel readings of the report are as great as or greater than the maximum noise levels for 1974 prescribed by the City's Noise Code (Exhibit 19) for air compressors, garbage trucks, and automobile horns (§§ 1403.3-5.11, 5.15 and 5.17 of Exhibit 19).

EPA found television to be the major source of the very high noise levels (on the eighth floor) (Exhibit 12, p. 9B), and recommended isolation of television in separate rooms (at the Federal Center, a dormitory type institution, headsets are available to listen to television, so that television noise is eliminated) or at least the use of evenly distributed low-level loudspeakers for both radio and television. However, EPA notes that decibel readings were very high even when television is eliminated, because of the hard reverberant acoustics of the building. The report's central recommendation is, therefore, to apply to walls and ceilings various forms of acoustical treatment such as spraying cellulose-fibre or the installation of fibre-glass boards (Exhibit 12, p. 9D).

None of these recommendations has been adopted, and at trial there was a total and conspicuous absence of defense testimony on the noise issue, nor have the defendants proposed any solution to this issue.

Although at trial defense counsel conceded (Transcript 614) that the obstacles to improvement were solely financial or related to feasibility, no testimony was offered to dispute the feasibility of recommendations by EPA or plaintiffs' witnesses. Indeed, even in their post trial memorandum, defendants' sole proposal as to the noise levels at MHD is that ". . . The Court should take judicial notice that a high level of noise is [a] permanent fixture everywhere in Manhattan and that most Manhattanites have come to live with, if not positively accept, the level of noise pervading their daily lives." While we freely take judicial notice, as requested, the suggestion hardly meets the issue whether the undisputedly intolerable level of noise at MHD cannot be effectively lowered, and whether plaintiffs do not have a right to be free from this gross tax on their mental health. We find that such improvements can be made effectively, and discuss below the legal consequence of the finding.

Ventilation and Heat: Almost all the light that is admitted to MHD is through solid glass brick. There is no fenestration whatever in cells or lock-out areas, and the few windows in high walls throughout the institution—many of which have been sealed or rendered inoperable in the past cannot admit much air even when open. The result is not only that ventilation is emphatically poor, but, equally important, that the inhabitants of the building suffer from excess heat through most, if not all the year. In

the warm months, of course, the unventilated steel and concrete structure is a heat trap and temperatures can reach 100° when the New York heat is intense. Inmate testimony established that this condition even applied on the lowest (4th) housing floor (Transcript 929).

Goff testified that on his visit to MHD in the summer of 1972, it was "hot", "humid" and "smelly" (Transcript 610) and these adjectives were applicable on the day of a court visit in August 1972. Dr. Teich, Director of Mental Health at MHD reported at trial that in the summer of 1972 his "team sat down and considered coming in bathing suits at times because of the heat" (Transcript 441).

Unhappily since the lack of ventilation is a year round problem, the problem of excess heat exists in the cooler as well as summer months. Even in winter, although heat does not fully circulate until late morning hours, (and before that time inmates must wear coats or blankets, Transcript 39-40; 728-29), once the artificial heat is effective, it becomes excessive. The result is that, for example, one witness testified that he could not sleep at night because of the heat (Transcript 793-4).

The root of the problem is the inadequacy of the interior ventilation system which has become affected over the years by air ducts plugged with dirt. Although the MHD authorities have made real efforts to clean the ducts in recent months, the problem, at least at the time of trial, remained critical, and it appeared altogether unlikely that it would be cured even when the City carried out its consent decree agreement to open certain windows which have been bolted shut as a security measure (Transcript 36, 839-40; 928).

Plaintiffs do not claim that excessive heat and lack of ventilation in themselves violate constitutional standards, but they do argue that these conditions are properly cognizable as part of the totality of circumstances at MHD against which their rights must be measured. Defendants do not dispute the conditions described, but minimize the significance of the acknowledged facts. We agree with plaintiffs' assertions (Post Trial Memorandum, p. 57) that the problem is grave and the need for relief pressing.

Windows: Such windows as exist at MHD are nearly all of frosted glass—translucent but not transparent. The result is that inmates cannot see human activity outside the building or even look at the sky. As one inmate described it:

> "It's very depressing. You know, I was locked into a big box and just didn't have any access of, you know, like finding out what was happening or anything. It was like a dungeon or something." (Transcript 789)

The same witness who later had one of the few cells which has access to a window through which one can see, but only if standing on a seat, often found a fellow inmate standing on a bench when he returned to his cell for lock-in. When asked to leave one of them once remarked, "I just want a shot of life" (Transcript 790).

Goff testified on the basis of a long professional experience as a penologist that "any facility which can have open windows, clear windows, without violating a privacy factor [a threat which does not exist at MHD] should do so". As he commented:

> "Again, we are trying to break down the confinement aspect, and if a person can look out the window and see a clear blue sky so much the better." (Transcript 592)

He pointed out that clear glass could be fabricated as thick as frosted glass to avoid security problems and former Commissioner McGrath admitted that there are no policy objections to clear glass. Indeed, it appears that there are transparent windows at the Bronx and Brooklyn Houses of Detention which vanden Heuvel found to provide a sense of fresh air and sunshine (Transcript 998-9).

Most significantly, Dr. Teich, Director of Mental Health at MHD, testified that the absence of transparent windows has a negative effect on mental health by causing inmates to become disoriented.

As he said:

> "People begin losing orientation as to what season it is. Frequently on a day like this morning it is hard to tell whether it is really day time out or night time because the light doesn't get through the windows there. They really have no contact with what the normal life is outside." (Transcript 452)

In Dr. Menninger's opinion, the absence of transparent windows was one of a number of sensory deprivations at MHD which were harmful to mental stability (Transcript 880-1). He wrapped it up by observing:

> ". . . a window in the room keeps the prisoner aware of the fact that this isn't the end of the road, this isn't —there is still a world there . . .". (Transcript 880).

Defendants presented no evidence in refutation. They argue that plaintiffs have failed to prove the allegations of the complaint (Paragraph 26) that inmates at MHD spend months without seeing the sun or sky. Except for the brief period of roof recreation afforded weekly, we find otherwise.

(4) *Recreation, Work Opportunities and Optional Lock-Out.*

A. *Physical Exercise*: Since no open areas exist on the block on which MHD is built, and no space has been provided within the structure, the only location available for physical exercise is the roof. It is divided in halves each of which contains 2076 square feet (Stipulation of Facts #22). Prior to the entry of the consent decree, when there were two detainees in most cells, 50-60 men used each half at one time (Stipulation of Facts #24). Since the consent judgment provides for a phased reduction of population of nearly 50%, we assume that the number of men using each half of the roof at one time will be scaled down to about 30 for a total of 60.

At the most, inmates spend one 50 minute period per week on the roof (Testimony of Commissioner Malcolm 1183-4, corroborated by all other witnesses on the subject). A basketball court covers one-half of the roof, and a volley ball court and ping pong table the other. Since no more than 10-12 men can profitably use either half, it is clear that 36 to 40 men using the roof will not get any exercise, or, if the opportunities are shared, that every man will get considerably less than 50 minutes of exercise. Indeed, one detainee testified that "[t]he only thing you could do is

play a little volley ball or basket ball and you had to wait your turn. So you're up there about an hour, an hour and a half and if you've got about ten or fifteen minutes exercise, you were lucky" (Transcript 1096). No effort was made by defense counsel to qualify this statement on cross-examination, and no defense testimony was offered to contradict it.

As part of the agreement underlying the consent decree, the roof is being covered, so that it can be used in inclement weather; and in the interim cold weather, jackets have been purchased to allow winter use. But these praiseworthy improvements will not expand the 50 minute hour per week; they will merely remedy the lack of *any* exercise in inclement weather as has been the case up to this time (Transcript 1172).

The significance of these facts is illuminated by Dr. Menninger's remark (Transcript 878) that " . . . I think my profession considers it almost part of its ten commandments to say that everyone should have some exercise daily".

The ACA standards (p. 57) recommend that "Prisoners should be allowed some form of exercise daily" and the United Nations Standard Minimal Rules (Exhibit 3) specify, "Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air daily if the weather permits" (Rule 21(1)).

Jails in other cities, such as Baltimore and Philadelphia, provide outdoor exercise yards (Transcript 671). In some cities an adjacent area (such as a parking lot) is enclosed for exercise use (Transcript 672).

We cannot agree with the argument of the City defendants (Memorandum pp. 18-19) that plaintiff's experts admitted that existing recreation conditions at MHD, when improved as planned (of which more below) will be sufficient to meet the needs of inmates. Goff's statements (Transcript 655), that, after planned improvements the program might meet minimal standards, or Dr. Menninger's that detainees might "get by" with two hours physical exercise weekly (Transcript 874) were peripheral admissions as to a program which they clearly found inadequate —much as they admired the efforts of the Department to improve the situation. Indeed Goff's statement was for all practical purposes withdrawn by the qualification that the presentation to him of a "bare schedule" was an insufficient basis for making a "firm evaluation" (Transcript 655). Nor can we accept the contention of the Municipal defendants' brief (p. 19) that Dr. Menninger's agreement that some people are not affected by lack of physical exercise (Transcipt 874) or vanden Heuvel's "admission" in that inmates are free to do push-ups in their cells moots the issue. (Indeed vanden Heuvel, who praised the Department for its efforts to expand recreational opportunities, criticized it, when discussing the "push-up" suggestion, for not encouraging or organizing that marginal possibility.)

B) *The Lock-Out Corridor*:

In his address to the National Conference on Prisons (December 7, 1971) Chief Justice Burger gave his view of prison dead time and its consequences in these words:

> "Playing cards, watching television or an occasional movie with nothing more, is building up to an expensive accounting when these men are released—if not before. Such crude recreation may keep men quiet for the time, but it is a quiet that is ominous for the society they will try to re-enter." (Address to the National Conference on Prisons, December 7, 1971.)

The Chief Justice's description is an appropriate picture of lock-out time at MHD.

When not locked *in* their cells, or participating in physical exercise or other programmatic activities, such as those described below, inmates are locked *out* of their cells within the "lock-out" areas adjacent to the cells described at the opening of this opinion. Most of the eight hours of such lock out time is spent in idleness or unproductive activity.

The largest of the lock-out areas is 65′ x 9′;[4] and the usable area is diminished by the location of some eleven combination tables and benches at which inmates eat their meals (Stipulation of Facts #17). The significance of these dimensions is illuminated by the testimony of Dr. Kinzel that a violence-prone person needs a 30 sq. foot area in which to function unless he is to become acutely uncomfortable (Transcript 305, 312-14). Since the average lock-out area is approximately 600 sq. feet, limited further by the presence of tables and benches, and is used by 30 inmates at a time, even with reduced population the average usable space for each of them will be less than 20 sq. feet.

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[4] At the time of trial, the ninth and tenth floor lock-out areas, including two corridors, were 55′ x 10′ and one 30′ x 37′ day room which also included tables (Stipulation of Facts 18 and 19).

Although, fortunately, the Departmental Administration is planning renovations, described below, which are intended to provide each inmate one hour per day of programmatic activity away from the housing floors (Transcript 1170), nevertheless, as Commissioner Malcolm agreed, the remainder of the inmate's day (when he is not locked in his cell) will continue to be spent locked in the lock-out area.

The accuracy of Chief Justice Burger's description of such dead time was confirmed by the testimony of one inmate who, when asked what he did during lock-out, answered:

> "A. Well, I sit down. Sometimes I might play cards. I can't read out there.
>
> The Court: Why?
>
> The Witness: Because it's too much distraction. And I go up and shower. I just pace the corridor, that's all." (Transcript 945).

As Warden Anderson pictured lock-out:

> ". . . there was no room for moving around; they could not have any activity. About all they can do is play checkers, and I didn't see anything like that, or cards." (Transcript 206)

In earlier days, the situation was somewhat better than it is today. For example, Warden Anderson testified that in the 1960's MHD had a separate arts and crafts area, and until the 1970 riots, inmates were allowed to visit the commissary area to select the purchases. Today, neither

such arrangement exists (Transcript 215-17). Inmates are still accorded commissary privileges but they order from a list instead of visiting the store. While in life outside it may reasonably be considered a privilege to buy from a list rather than going to a shop, such an arrangement in jail simply eliminates an opportunity for relief from monotony.

Among its "Minimum Standards" for *jails,* the ACA Manual (at p. 45) states:

> "*Inmate Employment & Activities*: Useful employment and constructive leisure-time activities are assurance against the damaging effects of idleness and are essential to the program of every jail housing prisoners held for service of sentence or for long periods awaiting trial."

(MHD is such an institution.)

Witnesses uniformly agreed that life at MHD failed to meet this standard. Warden Anderson criticized abandonment of pre-existing visits to the commissary (Transcript 217). Mr. Goff emphasized the desirability of getting inmates away from a fixed place as often as possible and recommended the use of day-rooms instead of lock-out areas (Transcript 588). Commissioner Aytch testified that Philadelphia detainees at least eat in a common dining area away from their cells (Aytch Deposition, p. 40), as they also do at the Federal Center in New York. Dr. Menninger stressed "[t]he idleness and the boredom and the non-programming, the fact that this [MHD] is just a bin" (Transcript 883). No defense witness testified in contradiction to these conclusions.

C) *Programmatic Activities:*

By the consent decree, the City defendants have agreed to renovate two floors at MHD by June 1974, to provide one hour daily of programmatic activity. Some useful, indeed admirable, opportunities for education and diversion presently exist, but the testimony was in sharp conflict as to the scope of such activities. For example, Commissioner Malcolm's estimates (at various points, Transcript 1139-70) of the number of hours spent by inmates in educational activities differed markedly from those of Russell Meade who had been detained at MHD fifteen months at the time of trial. These programs include High School equivalency, English as a second language, adult basic education, arts and crafts and drama. Commissioner Malcolm believed about 230 inmates participated in these sessions; Meade 60 to 70. The Commissioner estimated that of the total, 70 were students in the High School program; Meade put the number at 15. On the occasion of a court visit to the High School class during the course of trial, the number of students was unquestionably no more than 20. Assuming, as we reasonably can, that the number of students in attendance would not likely be below normal on the day of a preannounced court visit, Meade's estimates (based on observation over a period of fifteen months) appear dependable.

The Department has committed itself to what may amount to a major improvement of the programmatic activities available by agreeing, pursuant to Paragraph 2C of the consent decree, to remove cells from one-half of the eighth floor and one-half of the fifth floor to provide space for inmate programs and quiet recreation no later than

June 30, 1974. The Commissioner and his staff deserve solid commendation for this commitment (and for making some further space available in the basement) which, if sufficient useful recreational equipment is made available, has the potential of significantly remedying the present serious programmatic deficiencies. It is appropriate to note, however, that even after the completion of the proposed alterations, inmates will, still enjoy only two hours per week of activity in the new recreation spaces (Transcript 1197).

D) *Detainee Employment:*

To help eliminate idleness and boredom, plaintiffs urge that the Department provide greater employment opportunities for detainees within MHD itself. Although Commissioner Malcolm testified that such opportunities have increased—and the Departmental Administration is to be credited for the increase—nevertheless only 90 detainees (out of the reduced population of about 800) are employed at MHD. There are acknowledged difficulties in providing such jobs, not only because of limitations on useful work to be done, but also because turnover of population prevents proper training of many detainees, and of course the administration has no certain way of knowing how long a detainee will remain at MHD. Indeed, the turnover problem, as Commissioner Malcolm testified, is the fundamental reason for giving 160 jobs to convicted misdemeanant inmates whose sentences are fixed.

However that may be, 26 of the convicted inmates only perform sanitation and food serving work on housing floors, (Testimony of Commissioner Malcolm, February 26, 1973, pp. 25-7) and fourteen others merely do sanitation work on

other floors. It seems reasonable to believe that such elementary jobs, especially on housing floors, could be performed by inmates.

The ACA Manual (at p. 59) stresses the value of work programs for detainees. It is true that the Manual recognizes that "the administrator who seeks to rid his jail of the traditional atmosphere of idleness is confronted with many obstacles—", but the roadblocks enumerated, "lack of space, lack of funds, lack of trained personnel" do not appear to apply to sanitation and food serving work on housing floors. As the Manual goes on to say, at page 59:

> "But even in the traditional jail it is possible to provide purposeful activity for all inmates. A systematic program of good housekeeping with attention to painting, minor plumbing repairs and other preventive maintenance operations will provide employment for many inmates."

Considering the agreed needs for improved sanitation and maintenance at MHD, it is questionable whether the City defendants' position that further work opportunities are not available is supportable.

E) *Optional Lock-Out:*

Plaintiffs claim that even if there are obstacles to the increase of exercise, program and employment opportunities, a detainee should at least be afforded the option of privacy of being lock-in his cell during the lock-out period rather than being compelled to spend that time in the lock-out area. The defendants sharply contest the proposal.

Witnesses testified that even a sick detainee is rarely permitted to remain in his cell during lock-out (Transcript 803-08). Detainees are not permitted to clean their cells during lock-out even though cleaning materials are most easily available at that time (Transcript 53-5). Dr. Teich testified that he himself has had difficulty in securing permission for a detainee to remain in his cell for an interview with the doctor or a member of his staff (Transcript 541).

vanden Heuvel recommended allowing detainees optional lock-in during the lock-out period:

> "... so that they can have an opportunity to read or to study or to work or to be by themselves if they want to be. It's not very much to give a person, but to the extent we can give it, we ought to." (Transcript 1024)

He also saw it as an advantage that a detainee locked in would be free of assault.

The expressed concern of the Department as to optional lock-in was that it increased the risk of suicides (Transcript 1243-5)—a subject the gravity of which is accentuated by the significant number of suicides which have occurred at MHD and other city jails. The other side of the coin, however, is, as vanden Heuvel pointed out (Transcript 1027-8) that a detainee bent on suicide can just as easily perform his grim objective in the sixteen hours of *required* lock-in. Indeed, the Report of the Prison Death Review Board (Exhibit 10, p. 10), of which Commissioner Malcolm and vanden Heuvel were both members, unhappily indicates that an inmate can hang himself with "amazing rapidity" and that

even surveillance on housing floors is unlikely to prevent such a tragedy.

The testimony was uniform that an effective classification system, which could, as far as humanly possible, identify suicide prone inmates early after admission, presented the most feasible method of avoiding the risk of such events.

For example, Superintendent Aytch of Philadelphia gave his view in answer to the following question:

> "Q. A little bit earlier on direct examination you were discussing optional lockouts and lockins. Assuming that the population of the Tombs were reduced to one man in a cell and assuming also for the purposes of this question, there was a screening system to screen out people who were potentially suicidical, do you think there would be any problems to allow an inmate to stay in his cell during the daytime? A. Given the conditions you put, if this was available, I do not see any problems with it, if I understood your question correctly. I hope I did." (Aytch Deposition, p. 36).

Nevertheless, although considerable evidence supports plaintiffs' claims that optional lock-in is appropriate and feasible, Professor Cooper cautioned (Transcript 1337-38) that no change in present policy should be made until conclusion of his study to determine the feasibility of inaugurating such a classification system.

Since the Cooper study may cast light on the extent to which the major obstacle to optional lock-in is controllable, a decision on that issue should be reserved until the completion of the study which is expected at an early date.

(5) *Correction Officers:* Plaintiffs assert that a significant shortage of correction officers results in serious mistreatment of inmates.

In June of 1971, the complement of correction officers at MHD was 240. At that time, Albert Glick, Deputy Warden testified that 45 more officers were needed. (Exhibit 35, pp. 9, 145-6). In January of 1972, Glick told Inspectors of the New York State Commission of Correction that although there were then 250 correction officers, considerable overtime work on their part had been necessary to man the institution. Indeed, he asserted that post coverage required 372.76 officers (Exhibit 7; Report of New York State Commission of Correction, p. 1).

According to the City defendants, the number of correction officers at trial time was 246. (Exhibit 43; Answer to #13 of plaintiffs' second set of interrogatories). In November, 1972, MHD employees, overtime amounted to nearly 2,000 hours, at a cost of $17,000 (Exhibit 16).

It is true that Mr. D'Elia, Director of Operations of the Department of Corrections, believed that "the numbers we have [at MHD] are capable of doing the job they have to do", although he admitted that "as far as I am concerned I would like to see a few more . . ." (Transcript 1283). Nevertheless, substantial testimony established that the pressures of overwork at an intrinsically difficult job performed in the same environment of noise and heat suffered by inmates took its toll on the correction officers and was reflected on numerous occasions in mistreatment of prisoners.

These incidents ranged from the relatively minor but frustrating failure of officers to furnish inmates with information (Transcript 850) to more serious matters such as

the refusal to assist a sick inmate by calling a doctor (Transcript 84-5), failure to observe an inmate switching cells, (Transcript 57-8), failure to respond to alerts of queer behavior on the part of an inmate who two days later stabbed another prisoner (Transcript 936-9), failure to observe a distraught inmate who scratched his face until it bled, and attempted suicide (Transcript 751-3); ripping and tearing of legal papers, books and clothes of inmates (Transcript 78-81), beating of an inmate chained naked to bars, (Transcript 1100-1, 1106-7) and the beating of an inmate who was also burned by officers putting out cigarettes or cigars on his body (Transcript 101-110; 128-136).

One might have been inclined to discount the more extravagant details of these reports if they had not often involved the very cases of testifying witnesses (as, for example, the incident of burns by cigarettes and cigars), in all cases consisted of eye witness testimony, or gone totally unrefuted by the defendants either through cross-examination or by offering evidence in contradiction. Indeed, Board of Correction Reports (e.g. Exhibit 7, pp. 17-20 and Exhibit 8) corroborate plaintiffs' trial testimony by describing other similar incidents.

The burden of overtime also affects the conditions of visits to inmates. As the Board of Correction's Report on the Visiting System (Exhibit 13, p. 7) indicates, the officer posts in the visiting area are permanent overtime posts, and the report describes those who police visits as, consequentially, "[t]hose who are most tired and bitter," with an unsatisfactory attitude towards visitors (pp. 15-16).

The Board Report on suicides (Exhibit 9, p. 19) points out that heavy overtime has an adverse effect on an officer's

treatment of mentally disturbed detainees. While this aspect of the problem may be mooted by the Department's policy announced (since trial) of removing mentally disturbed detainees from MHD and other jails to a central facility, it nevertheless corroborates the strain under which correction officers work and the consequentially adverse effect on inmates.

Commenting on the lot of the correction officer, Dr. Teich stated:

> "They are locked in just as much as the inmates are and they are aware of that.
>
> "They live in a constant state of anxiety that something is going to jump off and they will be trapped in there and won't be able to get out . . . " (Transcript 508).

It was his view that "working a double shift is intolerable in that place" (Transcript 507).

Warden Anderson believed that the morale of MHD correction officers had declined since his inspections of the Tombs before 1970 (Transcript 220-1), that officers feared, and often failed to observe inmates (Transcript 220) and that they regarded service at MHD as "punishment duty" (Transcript 218).

Mr. Goff stressed that overtime work in a jail, by impairing efficiency and morale, aggregates relations between officers and inmates (Transcript 597). He and vanden Heuvel were in agreement that overtime could be at least reduced by greater use of lay workers for such duties as clerical functions and other non-custodial matters (Transcript 597, 666-7, 1006).

The undesirability of requiring correction officers to work overtime is illuminated by the ACA Manual's prescription that "A 40-hour work week of five consecutive days should be provided" (p. 175) and its warning that:

> ". . . without proper employment conditions, personnel incentive will be lacking. The alternative is a mediocre staff, an impotent source of supervisory and administrative staff, a high rate of turnover of employees, low morale, and, in general, a poorly operated correctional facility". (p. 175)

(6) *Discipline*: The Department's disciplinary rules do not provide for written notice of charges, confrontation or cross-examination of accusers, an independent hearing officer, written findings of fact or reasons for imposing punishment or the right to be represented by counsel or a counsel-substitute. While Rule 4.49(d)(1)(d) requires the hearing officer to "notify the inmate that he may have a reasonable number of witnesses—in his behalf if he claims that witnesses could establish his innocence or bring about important mitigating facts in the case", the Board of Correction Reports covering the period March 19, 1973 through June 19, 1973, submitted to the court pursuant to the consent decree and based on monitored hearings, demonstrate that the rule is more honored in the breach than in the observance and that hearing officers interpret the rule to mean that a detainee is to be advised of his right only if he first indicates that he has witnesses.

Correspondence and visits (except to and from counsel) are suspended as punishment for inmate infraction; al-

though the ACA Manual recommends (at 268) in regard to correspondence and visits that "such rights shall not be restricted for reasons of discipline except in instances where they have been abused", and repeats the admonition at 412 (Loss of Privileges) and 546 (Correspondence Privileges).

Detainees have been placed in confinement for as long as 31 days without a hearing (Transcript 97-8), without any egress except for a daily shower.

We discuss below the legal significance of these undisputed facts.

(7) *Classification*: That MHD is a maximum security institution is unquestioned. As we have indicated earlier, this characteristic has a direct effect on some of the major issues described, particularly the denial of contact visits, limitations on recreation, the hours of lock-in and lock-out policies, and handling of prisoner correspondence. Plaintiffs argue that it is unnecessary to confine most detainees under conditions of maximum security and that the Departmental administrators have within their power the capability of classifying detainees to identify those who require maximum security custody thereby permitting less restrictive confinement for the large majority of inmates whom they contend need no such restraint.

Goff, who prior to his present position as General Secretary of the Correctional Association of New York acted as Director of Classification for the New Jersey prison system (Transcript 578-9), testified that at most 20 to 40% of the MHD population needs to be held in maximum security. In his view, the Department is presently capable of classify-

ing detainees to determine those requiring maximum security custody, and indeed does so informally, but only with the result of imposing especially tight security in "heavy" cases (Transcript 601, 637). He strongly believed that MHD could safely lift many restrictions without sacrificing security through refinements of classification (Transcript 600-4) which are in use today at other pre-trial institutions (Transcript 641, 683-4).

Goff's testimony was supported by the views of Dr. Teich (Transcript 435, 501, 504), Dr. Menninger (Transcript 899), vanden Heuvel (Transcript 988, 1009-11, 1021-2), and Warden Gengler (Gengler Transcript 19-20).

A number of methods are available to secure information on which to form reliable conclusions as to a detainee's potential threat to security, including questionaires currently used to evaluate the risk of releasing a defendant on his own recognizance and a "Prisoner Inventory" developed by the Federal Bureau of Prisons (Exhibit 2).

Warden Anderson described the information provided by the latter:

> " . . . whether he is awaiting trial, or probation violation, things of this nature, or any possibility of detainers coming in on the individual from other offenses, the type of offense he is in on, whether it is against a person, against the public, a sex offense and so forth, and the estimated time; also whether it is a felony or a misdemeanor, the estimated time that the individual will be in the facility, whether there is a good chance of him making bail and being out shortly. His age, sex, of course, his employment history, how

long he's been there, his work skills, work status, whether he has had a full time job or just moving him around from job to job, and how long he was there, whether it is six months or over a year, the length of employment.

"His education, whether or not he has been in school, his marital status, and whether or not he has been living with a family, the duration of residence, the status, whether they own the residence, his attitude, his physical condition, his previous history, whether he is on drugs or alcoholic, whether he is in any special program, whether he would like to participate in the drug program or alcoholic program, and whether he would like to participate in the educational program for high school equivalency, et cetera." (Transcript 234-35).

It was the Warden's view that the system enabled authorities to determine satisfactorily whether inmates require maximum or less security.

According to the testimony of Warden Gengler (a court witness), the Federal Detention Center reaches a decision as to whether a detainee should be held in maximum security on the basis of FBI reports, information from marshals, arresting officers, other institutions and the observations of his staff. Such information is or should be equally available to authorities at MHD. It was Gangler's opinion that even on the basis of staff observation only, a useful classification could be made within a week after admission (Gengler Transcript 19-20). He has given up his predecessor's practice of sending maximum security detainees to MHD.

Superintendent Aytch (a City witness) testified that in Philadelphia, any detainee whose bail is less than $4,000 is housed in a minimum security institution (Aytch Deposition 7-8, 28).

We have referred above to the ACA Manual's assertion (p. 48) that prisoners requiring maximum security " . . . in the average rarely exceed 20% of the population." Indeed the Manual states (Principle V, pp. xx):

> "Until the guilt of the suspected offender has been established in the course of due process of law, he should be considered innocent and his rights as a free citizen should be respected, except for such restraints as are indispensable to insure the proper investigation and trial. (Principle V, pp. xx)

and, under the heading "Essentials for Custody and Security", the Manual puts at the top of the list (p. 366):

> "1. *An Adequate System of Classification of Prisoners.* Careful study, diagnosis and recommendations for treatment documented into case histories give prison workers the knowledge they need to handle inmates."

Like the ACA, the United Nations Standards for prisoners (Exhibit 3) assert that "unconvicted prisoners are presumed to be innocent and shall be treated as such" (Rule 84(2)) and that varying degrees of security should be provided to accord with the needs of prisoners.

The present departmental authorities are conscious of the desirability, if not the necessity, of developing a dependable classification system for MHD, and to their

credit have (as we have indicated) retained Professor H.H.A. Cooper, Deputy Director of the Criminal Law Education and Research Center of New York University School of Law to conduct a study as to classification of inmates at MHD (Transcript 1310-12). While Professor Cooper's study, the completion of which is anticipated at an early date, will no doubt define any obstacles to classifying detainees which are peculiar to MHD, he testified that he was "confident" that the study would develop a workable system (Transcript 1333) and his optimism was consistent with the views of almost all witnesses, whether for the plaintiffs or the defendants, that classification of detainees at MHD was indeed feasible. In the opinion of Dr. Teich, who is Director of Mental Health at MHD, inmates can be classified at intake with regard to mental illness and aggressiveness (Transcript 433-35). He believed that mental health aides could be trained to make these evaluations, and he stated that the Warden of MHD agreed that such a procedure was desirable (Transcript 504). In his view, some suicides could have been prevented by the existence of such a classification system (Transcript 463). Teich acknowledged, however, that those disturbed detainees who are quiet would probably not be observed at intake, and that, in any event, the present staff was not large enough to put into effect the system he proposed.

Dr. Kinzel, who had served as Staff Psychiatrist at the United States Medical Center for prisoners in Springfield, Missouri, testified that potentially violent prisoners can be identified by psychological screening (Transcript 329-30; 362-3). While he agreed that less information might be

available to MHD authorities as to detainees (than, for example, as to convicted prisoners or pre-trial prisoners under study at Springfield), he testified that the most significant information as to tendency to violence could be secured in a screening interview (Transcript 360-1).

Kinzel estimated that a psychological interview could be concluded in 30 minutes except in cases in which the interview suggested that the inmate was violence-prone (Transcript 365). Warden Anderson testified that it took only 15 minutes to interview an inmate to secure the information for the "Inventory" which he uses, although additional time may be required for follow-up telephone calls to refine the information secured (Transcript 293-4). Dr. Menninger shared Kinzel's belief that potentially disruptive persons can be identified by psychiatric examination (Transcript 899).

vanden Heuvel referred to the St. Louis classification system, which identifies persons who are mentally disturbed or potentially suicidal. Since its inauguration in 1968, no jail suicides have occurred (Transcript 990). The Board of Correction's Report on Prison Suicides and Urgent Recommendations for Action (Exhibit 9, pp. 15-18) of August 12, 1972, recommended that such a system be installed in New York City institutions.

Goff believed that a new detainee could be properly classified within a week of his arrival at MHD (Transcript 600, 608). This estimate is to be measured against information furnished by the Department (Exhibit 15), that as of April 30, 1972, 315 detainees at MHD had been held more than four months; of the 315, 167 had been in

custody for more than six months, 81 for more than nine months and 37 for more than one year. While the reduction of total MHD population since April 30, 1972, undoubtedly has reduced these numbers, it is nevertheless clear beyond dispute that in the very large majority of cases detainees are held long enough to permit thorough classification processing.

As to City witnesses, Commissioner McGrath, who headed the Department when this suit was brought, testified two years ago (Deposition; Exhibit 36, p. 65) that MHD's security had "to be designed to take care of the most dangerous of them rather than the least dangerous" because of lack of "time, staff [and] facilities". He nevertheless stated that the Department sought to commence classifying inmates (Exhibit 36, pp. 66-7). It was McGrath's plan to house minimum security risk inmates at a new MHD, a building then planned, but since abandoned by the City.

Commissioner Malcolm testified at trial that his preference was to have separate maximum, medium and minimum facilities, an objective devoutly to be sought, but apparently nowhere in the cards. The problems of security at MHD are undoubtedly complicated by the fact that it houses all types of detainees; but this difficulty exists in many other large municipal jails in which inmates are permitted greater mobility and freedom than at MHD. Indeed, even at MHD's sister institution, the Bronx House of Detention, 50% of the inmates live in dormitories, allowing substantially greater freedom of movement (Transcript 1205, 1253). Commissioner Malcolm agreed that the

mix of cases at MHD was not unrepresentatively "heavy" but rather was a fair reflection of the jail population of the City as a whole (Transcript 1178).

Joseph D'Elia, Director of Operations of the Department, who earlier had served as Assistant Deputy Warden of MHD and as a correction officer and Captain at various departmental institutions, believed that even with a refined classification system, maximum security would nevertheless be necessary for all because distinctions as to security arrangements among detainees would cause jealousy and resentment on the part of the less favored (Transcript 1253, 1280). But his view was not shared by Professor Cooper who is retained by the City to develop a classification system which would, of course, result in such distinctions (Transcript 1338-9).

We conclude that although Professor Cooper's finished study may outline special problems at MHD which would properly affect the precise relief to be afforded here, the evidence has established that the institution of a workable classification system at MHD is feasible.

(8) *Correspondence*: Plaintiffs claim that MHD's policies as to the handling of inmate mail, and limitations on receipt of inmate reading matter, violate their First Amendment rights and, in the case of mail from attorneys and courts, their rights under the Sixth Amendment. There are no disputes as to the facts.

All incoming mail is opened and inspected for contraband. While Departmental Rule 4.18A generally forbids officers to read or censor mail, they are permitted to do so

where a "mail watch" is required for security reasons in individual cases. The rule makes no exception for mail received from courts or attorneys, and all mail, including that received from courts or attorneys, is opened without the detainee being present.

Inmates may receive books or magazines through the mail only from the publisher directly. The purpose of the rule is to prevent the introduction of contraband in books or magazines brought or mailed by relatives or friends (Transcript 1208-9). The burden of this limitation might not be great if the institution supplied books, periodicals and newspapers in reasonable number, but two court inspections of the printed material available to inmates at MHD established decisively that the number of books or other items is grossly insufficient in relation to the number of inmates (and the average length of stay) and that the material which is available (e.g. "Yachting" magazine) is largely irrelevant to the interests of the defendants. This is true in spite of the fact that a small law library exists, that libraries very limited in numbers of books have been established on housing floors and an attempt is being made to improve the relevance of available reading material by including books relating to Black and Puerto Rican culture.

Evidence as to the security risk of a more flexible mail policy is sparse, but such as it is, it appears to indicate that the risk is minimal, and at the worst controllable. For example, Deputy Warden Glick testified (Deposition, Exhibit 35, pp. 139-40) that the only contraband found in incoming mail during his tenure as commander was money, which was deposited in the inmate's commissary account.

Opinion

FINDINGS

This long recital leads to the following findings of fact:

1. Detainees at MHD are subject to maximum security conditions at all times.

2. MHD, like other pre-trial detention facilities, is capable of classifying inmates to determine those requiring maximum security custody.

3. Most detainees at MHD, as at other detention centers, can be safely held in custody in less than maximum security conditions.

4. Booth visiting arrangements at MHD are frustrating and degrading to inmates and their visitors at MHD.

5. An adequate classification system would permit MHD to determine those inmates who could be permitted contact visits without significant added risk to the institution, although contact visits would require some additional correctional officers to observe visits and some rearrangement of existing physical facilities.

6. Prior to 1970, each MHD inmate was permitted five visits weekly and allowed to receive more than one visitor at a time. Today he is granted only two visits per week, and sometimes less, by only one visitor at a time. Visits do not occur mornings, afternoons, weekends or holidays. The visiting schedule at MHD is unnecessarily restrictive. The addition of correction officers would permit an appropriate expansion of visiting arrangements.

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7. The levels of noise at MHD at all times except late night or early morning are unbearably high. Long term exposure to such noise can cause impairment of hearing, and even short exposure may increase tension and adversely affect mental health.

8. As a result of inadequate ventilation, heat at MHD is a burden in summer, and at times even in cold weather. There are occasions in winter when heat is inadequate. These factors have adverse effect on mental and physical health.

9. Most detainees at MHD are unable to see out of the building. Such lack of contact with sun, sky, street or the outside world can result in psychological disorientation, especially in an institution in which a large number of detainees are held for a long period. Installation of transparent windows at MHD would not significantly increase security risks at MHD.

10. Physical recreation at MHD is limited to a maximum of 50 minutes per week in a small rooftop area and these limitations generally have an adverse effect on mental and physical health.

11. Detainees are required to be outside their cells eight hours per day. During this period they are generally confined to lock-out areas of limited space adjacent to their cells where the only activities are television, radio and table games. This situation will be alleviated when alterations of one-half of the fifth and eighth floors, totalling 10,000

square feet, is made available for program activity and quiet recreation in June, 1974. The extent of alleviation will depend on furnishing the new areas with sufficient useful equipment. Admirable educational programs exist, but are restricted in number and scope so that only a small percentage of detainees are able to take part in them. The result is that most detainees spend their time at MHD in destructive idleness and boredom.

12. The mental health of detainees would be promoted and tensions at MHD reduced if detainees were given the option of remaining in their cells in the lock-out period. The granting of such an option, with cell doors locked during the lock-out period, would not jeopardize the security of the institution.

13. The number of security officers at MHD is insufficient for observation or protection of detainees from others or themselves, or to assist detainees as to fundamental needs. As a result of working long and hard hours under the trying physical conditions which exist at MHD, morale of officers is adversely affected, and accordingly some officers become tense and upon occasion mistreat detainees.

14. The disciplinary rules at MHD do not provide for written notice of charges, confrontation of accusers, free summoning of witnesses, or an independent hearing officer, written findings of fact or reasons for punishment, or the right to be represented either by counsel or counsel substitute. A detainee found guilty of disciplinary infraction may be rigorously punished.

15. Rules as to correspondence at MHD require that all mail, including that from attorneys and courts, be opened to inspect for contraband. In individual cases involving security considerations, mail may be read and censored. All mail is opened without the detainee being present. Books and periodicals may be received only from the publisher directly and not from friends or relatives.

16. The totality of circumstances at MHD have produced dismal conditions significantly inferior to those existing at New York State penal institutions and many other municipal or federal houses of detention.

II.

The great majority of prisons in America are municipal or state institutions. Yet in recent years, the assertion of constitutional rights by prisoners has been litigated largely in the federal courts. In earlier times the federal courts withheld action or acted with great caution in such cases, observing the principle of comity and recognizing that the administration of prisons requires an experties to which courts do not pretend. However, the reluctance to assert authority has rapidly eroded in recent years as one federal court after another has concluded that conditions in America's prisons and jails have sunk below federal constitutionally acceptable levels. As the United States Supreme Court has put it, "Federal courts sit not to supervise prisons but to enforce the constitutional rights of all 'persons', including prisoners." *Cruz* v. *Beto,* 405 U.S. 319, 321 (1972).

The major contentions of the plaintiffs are clean cut. They argue that the City of New York has subjected them to degrading or punitive conditions inconsistent with their status as pre-trial detainees who are presumed innocent, and has thus violated their rights to due process of law, to equal protection of the laws and to be free from cruel and unusual punishment.

In judging the validity of these contentions, we take as our starting point that plaintiffs are unconvicted detainees who, but for their inability to furnish bail, would remain at liberty, enjoying all the rights of free citizens until and unless convicted. We are guided, therefore, not only by the modern judicial view, originating in the seminal declaration of *Coffin* v. *Reichard,* 143 F.2d 443, 445 (6th Cir. 1944), that *all* prisoners, convicted or detained, "[retain] all rights of the ordinary citizen except those expressly or by necessary implication taken from [them] by law," but also by the precept that, because of "the presumption of innocence, secured only after centuries of struggle" (*Stack* v. *Boyle,* 342 U.S. 1, 4 (1951)), a *detainee* retains all rights of the ordinary citizen except those necessary to assure his appearance for trial.

The words of Blackstone still express the law:

> "Upon the whole, if the offense be not bailable, or the party cannot find bail, he is to be committed to the county gaol . . . there to abide til delivered by due course of law . . . . But this imprisonment, as has been said, is only for safe custody, not for punishment. Therefore, in this dubious interval between the commitment and the trial, a prisoner ought to be used with

> the utmost humanity, and neither be loaded with needless fetters or subjected to other hardships than such as are absolutely requisite for the purpose of confinement only." 4 Blackstone Commentaries 300.

It follows from these ancient commands that detainees may not be subjected to punishment (much less cruel and unusual punishment) *qua* detainees, and that:

> ". . . it is manifestly obvious that the conditions of incarceration for detainees must, cumulatively, add up to the least restrictive means of achieving the purpose requiring and justifying the deprivation of liberty". *Hamilton* v. *Love,* 328 F. Supp. 1182, 1192 (E.D. Ark. W.D. 1971).

As the Supreme Court has said:

> ". . . even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton* v. *Tucker,* 364 U.S. 479, 488 (1960).

See also "Constitutional Limitations on the Conditions of Pretrial Detention", 79 Yale Law Journal 941, 949.

The application of these principles has resulted in a legion of recent decisions ordering improvement of the conditions of custody for detainees, based variously on the

presumption of innocence, the due process clause, the equal protection clause (conditions of confinement of detainees more restrictive than necessary to assure appearance at trial discriminate impermissibly between detainees and bailees; jail conditions may not be harsher for detainees than prison conditions of convicts) and, the Eighth Amendment's proscription against cruel and unusual punishment. For example, see *Jones* v. *Wittenberg,* 323 F. Supp. 93 and 330 F. Supp. 707 (N.D. Ohio 1971), *aff'd sub nom. Jones* v. *Metzger,* 456 F.2d 854 (6th Cir. 1972); *Bishop* v. *Lamb,* Civ. LV-1864 (D. Nev. August 24, 1973); *Inmates of Suffolk County Jail* v. *Eisenstadt,* 360 F. Supp. 676 (D. Mass. 1973) ("... it is reasonable to believe that [the sense of the community] would be offended by a facility housing presumptively innocent persons, as to whom theories of deterrence and retribution are inapplicable, the quality level of which is grossly inferior to that afforded convicts," at 688); *Palma* v. *Treuchtlinger,* 72 C 1653 (E.D. N.Y. March 5, 1973); *Hodge* v. *Dodd,* Civ. 16171 (N.D. Ga. March 5, 1973); *Inmates of Milwaukee County Jail* v. *Petersen,* 353 F. Supp. 1157 (E.D. Wis. 1973) ("... as individuals who have not been convicted of crime, they retain all rights retained by arrestees who have been released on bail, except for the curtailment of mobility deemed necessary to secure attendance at trial and the limitations necessary to protect the security of the institution in which they are detained" at 1160); *Jones* v. *Sharkey,* Civ. No. 4948, (D.R.I., June 7, 1972); *Collins* v. *Schoonfield,* 344 F. Supp. 257 (D. Md. 1972) (a detainee "can only be deprived of the constitutional rights a defendant on bail awaiting trial enjoys to the extent such denial is required

to insure that he appears at trial and to restrain him from endangering or disrupting the security of the institution . . . " at 265); *Brenneman* v. *Madigan,* 343 F. Supp. 128 (N.D. Cal. 1972) (" . . . the principle of the least restrictive alternative consistent with the purposes of a commitment inheres in the very nature of a pre-trial confinement which entails an extraordinary deprivation of liberty justifiable only when the detainee is unable to make bail" at 138); *Conklin* v. *Hancock,* 334 F. Supp. 1119 (D.N.H. 1971); *Seale* v. *Manson,* 326 F. Supp. 1375 (D. Conn. 1971) ("[u]nconvicted detainees may be treated as convicts only to the extent the security, internal order, health, and discipline of the prison demand; considerations of rehabilitation, deterrence or punishment are not material", at 1379) and *Davis* v. *Lindsay,* 321 F. Supp. 1134, 1139 (S.D.N.Y. 1970).

These propositions are now firmly embedded in the law: That a detainee may not be deprived of the rights of other citizens beyond the extent necessary to assure his appearance at trial and the security of the institution to which he is confined; that a detainee may not be confined under conditions more rigorous than a convicted prisoner, and that a detainee is entitled to protection from cruel and unusual punishment at least as a matter of due process if not under the Eighth Amendment.[5] The conditions at MHD must be measured by these standards.

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[5] We recognize that since detainees may not constitutionally be punished *at all qua* detainees (as distinct from being punished for infractions of rules of the institution) there exists " . . . considerable doubt that the cruel and unusual punishment clause is properly applicable at all until after conviction and sentence" (*Johnson*

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1. *Maximum Security: Classification:*

Without exception, all detainees at MHD are housed in maximum security conditions. In this respect MHD is not atypical of American jails. Even though one leading expert on penology has noted that maximum security is unnecessary for 80% of the jail population under the most extreme circumstances (Myrl Alexander, Jail Administration 284 (1957) as cited at 79 Yale Law Journal 957 fn. 98), another student of the subject has recently written:

> "Most jails are maximum-security facilities. Lack of programs and lack of staff lead to the standard practice of viewing all inmates as maximum-security risks. . . .
>
> * * * * *
>
> "Judging from the experience of some innovators in the field, we know that the need for maximum-security detention at the local level has been vastly exaggerated. For example, roughly 50% of most jail populations do not even belong in jail". (Jails and Criminal Justice in "Prisoners in America" published by the American Assembly, Columbia University, 1973), pp. 66-67.

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v. *Glick*, 481 F.2d 1028, 1032 (2d Cir. 1973)). We find however, that the maximum security conditions at MHD factually constitute cruel punishment, at least for those in whose cases maximum security is not required, and we agree with *Johnson, supra,* that ". . . it would be absurd to hold that a pre-trial detainee has less constitutional protection . . . than one who has been convicted." The "solution", as *Johnson* points out, is that detainees are protected against such punishment by the due process clause and, where applicable, the equal protection clause.

However representative the maximum security nature of MHD may be, the question remains whether confinement in such circumstances abridges the rights of the large number of detainees who pose no risk to the security of the institution, and whose appearance at trial can be assured without such rigorous restraint. It must always be remembered that but for his inability to provide bail *every* detainee at MHD would be free to lead his life without *any* restraint until and unless he was tried and convicted.

We have found that MHD is capable of classifying inmates to determine those who do and do not require maximum security custody, and that most detainees can be safely held under less restraint. It follows that the rights of the latter group are abridged by being held in maximum security since the conditions of their incarceration do not " . . . cumulatively, add up to the least restrictive means of achieving the purpose requiring and justifying the deprivation of liberty." *Hamilton* v. *Love, supra,* at 1192. *Shelton* v. *Tucker,* 364 U.S. 479, 488.

The imposition of maximum security confinement (including lock-ins in cells of 16 hours per day) on those detainees in whose cases it is not necessary, violates their rights to due process by punishing them although they are unconvicted, and violates their rights to equal protection of the laws by unnecessarily treating them more harshly than convicts or bailees.

It follows that defendants are obligated to eliminate or modify those features of maximum security at MHD which are not necessary for the safety of the institution or to assure appearance of detainees at trial. The first step in this regard must be the establishment of a classification system

to determine those who do and who do not require maximum security custody. In requiring such relief, we join a parade of other federal courts which in recent years have imposed similar provisions in order to protect the constitutional rights of detainees. *Bishop* v. *Lamb,* Civ. LV, 1864 (D. Nev. 1973); *Obadele* v. *McAdory,* Civ. Act 72-J 103(N) (S.D. Miss., June 19, 1973); *Hamilton* v. *Landrieu,* 351 F. Supp. 549, 552 (E.D. La. 1972); *Taylor* v. *Sterrett,* 344 F. Supp. 411, 423 (N.D. Tex. 1972); *Brenneman* v. *Madigan, supra,* 343 F. Supp. 128, 131 (N.D. Cal. 1972); *Hamilton* v. *Love,* LR-70-C-201 (E.D. Ark. decree of June 22, 1971, Paragraph 9); *Jones* v. *Wittenberg, supra,* 330 F. Supp. 707, 717 (N.D. Ohio 1971), *aff'd sub nom. Jones* v. *Metzger,* 456 F.2d 854 (6th Cir. 1972).

2. *Visiting Rights*:

The conditions of visiting are simultaneously fundamental to institutional security and to inmate morale. When the two are in conflict, the need for security is paramount; but the need must be supported by the evidence, and the doctrine of least necessary restraint requires, as a matter of due process, that jail visiting conditions be curbed only to the extent needed to assure institutional security and administrative manageability. Moreover the equal protection clause mandates treatment of New York City detainees at least as favorable as that accorded New York State prisoners, unless a rational basis for the different treatment is provided. Yet convicted prisoners in New York are permitted contact visits, and substantially more visits than MHD detainees (including daytimes, weekends and holidays), for substantially longer periods.

The reasons proffered for the very much less favorable treatment of MHD detainees do not stand up. Although the City defendants have theorized that a detainee, anxious because of the uncertainty of his future, is more "predisposed" to attempt escape than a convicted prisoner, they have offered no evidence to support the theory, and we have indicated our doubt as to its validity. Although the fact that only one escape has occurred in the history of MHD may be argued to result from maximum security conditions, there is no evidence on the point, and in any event such an unusually good security record certainly does not support the view that MHD detainees have a particular predisposition to attempt escape. Indeed, defendants did not submit any evidence that *attempts* to escape were proportionately higher at MHD than other institutions, and it is reasonable to assume that such highly relevant proof would have been offered if it existed.

Nor is the argument that the urban location of MHD (as distinct from the rural, walled sites of State prisons) presents special escape problems persuasive in view of the fact that, for example, New York City federal detainees (presently held within a short distance and soon to be held within two blocks of MHD) are permitted contact visits, as are detainees in other cities such as Philadelphia and even adolescent detainees held by New York City itself. Defendants furnished no evidence that escape problems were greater at these institutions because of their more liberal visiting programs and the evidence indicates no such consequences.

The same observations apply to the claim that the MHD visiting system is justified because of the threat of intro-

duction of contraband. While that threat is undoubtedly higher than elsewhere in the present narcotic-ridden condition of New York City, it has not been demonstrated to be higher than at the New York City federal detention center or the Department's own Adolescent Remand Facility, and the testimony is persuasive that it can be controlled at MHD as well as at other institutions by strip searches or other appropriate methods.

There is no doubt that the Department's administrators genuinely believe that allowing contact visits will pose a threat to institutional security. It is natural that those who are responsible for operations and who bear the brunt of the public's criticism if things go wrong will in good faith come to such a conclusion. Nevertheless, constitutional rights cannot be denied on the basis of "dire predictions" not supported by the evidence. *Goodwin* v. *Oswald*, 462 F.2d 1237, 1244-5 (2d Cir. 1972); *Davis* v. *Lindsay*, 321 F. Supp. 1134 (S.D.N.Y. 1970). Although we recognize that the Department is closest to the situation, we find the evidence to establish that the increase in risk caused by contact visits will be marginal and controllable. In the circumstances, the dictates of due process and equal protection require that a system of contact visiting be introduced at MHD, including liberalization of visiting days and hours, at least for all detainees who, by classification, are shown not to require maximum security custody.

For reasons stated at footnote 5 above, we do not rest our decision on the prohibition of cruel and unusual punishment (nor, as suggested by plaintiffs' brief, on the right to privacy under the Ninth Amendment). Nevertheless, we find that the present visiting system, which denies presum-

ably innocent detainees (20% of whose cases may well be dismissed,[6] many of whom are held for long periods and all of whom are in custody solely because of inability to furnish bail) the right to shake hands with a friend, to kiss a wife, or to fondle a child, to be inhumane and cruel in fact. One court described similar visiting conditions as:

> "... an affront to the dignity of the prisoner as a man; they exceed the limits of standards of decency; and they are a shame to Philadelphia, as they would be a shame to any civilized community." *Jackson* v. *Hendrick*, 71-2437, Court of Common Pleas, Philadelphia County, Pa., April 7, 1972 at 225.

Such claims are proof against defendants' assertion that instituting a liberalized visiting system will require expenditures to increase the number of guards and to alter the visiting facilities. As Justice (then Judge Blackmun has said: "[h]umane considerations and constitutional requirements are not, in this day, to be measured or limited

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[6] See plaintiffs' memorandum before the Appellate Division of the New York Supreme Court, First Department, in *Bellamy* v. *The Judges and Justices Authorized to Sit in The New York City Criminal Court*, etc., p. 11 (Table 4) and Appendix A. In *Bellamy*, plaintiffs conducted a study, under the supervision of the Legal Aid Society of New York which represented them, which established that for the months of April, May and June 1971, 20% of the cases of detainees were disposed of by dismissal, 79% by pleas of guilty and 1% by trial. The documentation contained in Appendix A demonstrates that the study was responsibly made by fully qualified professionals and that its results are dependable. A copy of the study, furnished by the plaintiffs here, was made available to the defendants, and the Court requested comment or furnishing of statistics by the City as to the percentage of cases dismissed. The City has made no comment nor offered any figures to challenge those contained in the *Bellamy* study.

by dollar considerations . . . " (*Jackson* v. *Bishop,* 404 F.2d 571, 580 (8th Cir. 1968)).

Our disposition of this issue follows many recent holdings to the same effect. *Bishop* v. *Lamb, supra,* Civil LV-1864 (D. Nev.), August 24, 1973; *Inmates of Suffolk County Jail* v. *Eisenstadt,* 360 F. Supp. 676 (D. Mass. 1973); *Collins* v. *Schoonfield, supra,* Civ. 71-500-K (D. Md, July 27, 1972, decree par. VI); *Jones* v. *Sharkey, supra,* C.A. 4948 (D.R.I., June 7, 1972); *Jackson* v. *Hendrick, supra,* 71-2437 (Court of Common Pleas, Philadelphia County, Pa., April 4, 1972, at 131-7); *Jones* v. *Wittenberg, supra,* 330 F. Supp. 707, 717 (N.D. Ohio 1971), *aff'd sub nom. Jones* v. *Metzger,* 456 F.2d 854 (6th Cir. 1972); *Brenneman* v. *Madigan, supra,* 343 F. Supp. 128, 141 (N.D. Cal. 1972) and *Hamilton* v. *Love, supra,* LR-70-C-201 (E.D. Ark., June 22, 1971, at par. 7B of decree).

3. *Exercise and Recreation*:

Dr. Menninger's observation that " . . . my profession considers it almost part of its ten commandments to say that everyone should have some exercise daily" finds its counterpart in the rule that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution". *Sinclair* v. *Henderson,* 331 F. Supp. 1123, 1131 (E.D. La. 1971), quoted with approval in *Palma* v. *Treuchtlinger,* 72 C. 1653 (E.D.N.Y., March 5, 1973).

The right of a prisoner to reasonable physical exercise is fundamental. Where necessary, courts have required struc-

tural alterations to provide the required space, see, e.g., *Hamilton* v. *Love, supra,* 328 F. Supp. at 1193 and decree of June 22, 1971, Par. 7D; *Wayne County Inmates* v. *Wayne County Board of Commissioners,* Civ. #173-217 Circuit Court, Wayne County, Michigan, July 28, 1972, at 25-6, and have ordered that particular periods of exercise be made available, *Hamilton* v. *Landrieu, supra,* 351 F. Supp. at 550, or that outdoor exercise areas be created, *Taylor* v. *Sterrett, supra,* 344 F. Supp. at 422. *See, also, Holland* v. *Donelon,* Civ. No. 71-1442 (E.D. La., June 6, 1973) at 12 and cases cited, *Brenneman* v. *Madigan, supra,* 343 F. Supp. at 135, 140; *Conklin* v. *Hancock, supra,* 334 F. Supp. at 1122 and *Jones* v. *Wittenberg, supra,* 330 F. Supp. at 717.

The 50 minute per week opportunity for exercise at MHD (even supplemented by other recreational programs) does not meet constitutional standards. The difficulty of providing space for exercise in an urban institution is unacceptable as justification for the deprivation imposed on MHD inmates. The jails in question in the cases cited were city facilities faced with the same difficulty.

The present administration of the Department is making admirable efforts to overcome the deficiencies in the existing program of physical exercise at MHD. Unfortunately, it appears unlikely that even the improved program will bring MHD up to constitutional standards. The plaintiffs are entitled to the relief necessary to achieve that objective.

4. *Environment*:

"[T]he courts cannot close their judicial eyes to prison conditions which present a grave and immediate threat

460 F.2d 765, 768 (5th Cir. 1972).
to health or physical well being." *Campbell* v. *Beto,*

As Chief Judge Kaufman has recently written "a tolerable living environment is now guaranteed by the law" for prisoners. Book Review, 86 Harvard L. Rev. 637, 639 (1973).

MHD does not provide a tolerable living environment for its inmates. Extremes of noise and heat, inadequacy of ventilation and inability to see the sun, sky or outside world, in some instances threaten, and in all cases unnecessarily burden the health of its prisoners.

Such deprivations are of constitutional magnitude. A prisoner's claim of excessive or inadequate heat states a claim under the Eighth Amendment and 42 U.S.C. §1983 (*Rozecki* v. *Gaughan,* 459 F.2d 6 (1st Cir. 1972), and injunctive relief may be granted against such burdens. *See, also, New York State Assn. for Retarded Children, Inc.* v. *Rockefeller,* 357 F. Supp. 752, 765 (E.D.N.Y. 1973); *Brenneman* v. *Madigan, supra,* 343 F. Supp. 128 (N.D. Cal. 1972); *Jones* v. *Wittenberg, supra,* 330 F. Supp. 707, 721 (N.D. Ohio 1971). Inadequate ventilation has been ordered remedied by judicial decree, *Hamilton* v. *Love, supra,* (decree of June 22, 1971 and decree of April 25, 1973 (13 Cr. L. 2198)); *Hamilton* v. *Landrieu,* 351 F. Supp. 549, 554 (E.D. La. 1972); *Hamilton* v. *Schiro,* 338 F. Supp. 1016, 1017 (E.D. La. 1970); *Jones* v. *Wittenberg, supra,* at 721; *Jackson* v. *Hendrick, supra.* Clear glass has been ordered installed in *Hamilton* v. *Landrieu, supra,* 351 F. Supp. at 554.

Lack of precedent as to an inmate's right to be protected from intolerable noise may be explained by Dr. Menninger's

testimony (Transcript 882, 885) that the Tombs is noisier than any of the 150 to 200 jails he has visited. In any event, as we have indicated earlier, the City's own Environmental Protection Agency's findings establish that the level of noise at MHD constitutes a threat to hearing and mental health. Such a condition falls easily within the rationale of the decisions cited above.

The decree implementing this opinion must contain remedial provisions which will assure a "tolerable living environment" at MHD.

5. *Optional Lock-Out*:

We have found that the mental health of MHD detainees would be promoted if they were given the option of remaining in their cells in lock-out periods. The security of the institution would not be jeopardized by granting such an option. We recognize that adoption of a system of optional lock-out may require experimentation before an effective plan can be developed on the basis of experience. A plan for changing to an optional lock-out system will be provided in the decree, to assure, as the least restrictive alternative, that detainees are accorded, where possible, the "right to be left alone". (Brandeis, J., dissenting, in *Olmstead* v. *United States*, 277 U.S. 438, 478 (1928)).

6. *Correction Officers*:

We have found that the number of security officers at MHD is insufficient for observation or protection of detainees, or to assist detainees as to fundamental needs; and that morale of the officers is adversely affected by

working long hours under trying physical conditions so that some officers occasionally mistreat prisoners.

Prisoners, whether detainees or convicts, are constitutionally entitled to be free of mistreatment by their custodians and to be protected from harm, *New York State Assn. for Retarded Children, Inc.* v. *Rockefeller,* 357 F. Supp. 752 at 764-5 (E.D. N.Y. 1973), and cases cited. Where deprivation of these rights flows, as it does here, from inadequacy of staffing, the shortage must be remedied. *Jackson* v. *Bishop, supra,* 404 F.2d at 580; *New York State Assn. for Retarded Children, Inc.* v. *Rockefeller, supra,* 357 F. Supp. at 768. The alternative is the release of those held in custody. *Hamilton* v. *Love, supra,* 328 F. Supp. at 1194; *Holt* v. *Sarver,* 309 F. Supp. 362, 385 (E.D. Ark. 1970), *aff'd,* 442 F.2d 304 (8th Cir. 1971).

Yet no one suggests that the City of New York does not have the resources to do the job or that the plaintiffs should be released. The solution is clearly to provide the necessary personnel, as has been ordered, for example in *New York State Association, supra; Hamilton* v. *Love, supra; Hamilton* v. *Landrieu, supra,* 351 F. Supp. at 552; *Jones* v. *Wittenberg, supra,* 330 F. Supp. at 715-16 (*aff'd sub nom. Jones* v. *Metzger,* 456 F.2d 854); and *Jackson* v. *Hendrick, supra* at 16. The relief to be granted here will be fashioned accordingly.

We note that the Department has recently entered into an agreement with the Security Officers' Union which permits a ten hour shift. (Testimony of Commissioner Malcolm, Transcript February 26, 1973 at 18-19). Since the Department is convinced that this new authority will give it important operating flexibility, its implementation should

not be precluded by the decree if it can be demonstrated that a ten hour shift will not interfere with the objectives of prisoner protection and the avoidance of mistreatment.

7. *Discipline*:

A: *Disciplinary Procedures*: MHD detainees may be punished for infractions of the rules without written notice of the charge; the right to confront accusers, cross-examine witnesses, or, to call witnesses except on condition;[7] the right to written findings and reasons for the decision; or the right to counsel or counsel substitute. Plaintiffs claim that they are entitled to these rights as a matter of due process.

If found guilty of an infraction, a detainee may be confined to his cell nearly 24 hours each day, thus losing any opportunity for recreation, and may be deprived of mail and visiting privileges. New York State prisoners may not be deprived of any of these privileges (7 NYCRR §306(a)). Again unlike State practice, there is no time limitation dur-

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[7] The regulations (4.49d) do provide that, *at the hearing* on disciplinary charges, the disciplinary officer shall:

> "(d). Notify the inmate that he may have a reasonable number of witnesses appear in his behalf, if he claims that witnesses could establish his innocence or bring out important mitigating facts in the case."

While on its face this provision may meet the requirements of due process, the fact is that the rule is interpreted by hearing officers to mean that a detainee is to be advised of his right only if he indicates first that he has witnesses whom he wishes to present. (See pp. 55-6 of text above, referring to Board of Correction Reports submitted pursuant to the consent decree). It is to be noted that the regulation does not require advice to the detainee *in advance* of the hearing.

ing which punishment—including the possibility of "punitive segregation"—may be imposed. (*Compare* Rule 4.49(e) of the Department *with* 7 NYCRR §253.5(a)).

If the detainee is found guilty of the offense for which he is being detained, disciplinary reports are available for preparation of pre-sentence reports for the courts. This possibility, of course, heightens the seriousness of the consequences of disciplinary action against a detainee. Furthermore, some infractions of discipline involve criminal charges, and in such cases the elements of due process are of critical importance.

In recent years, the Supreme Court has notably extended the parameters of due process in cases involving deprivations which may result in serious loss. While the Court has written no opinion as to the requirements of due process in cases of prisoner discipline, its opinions in related areas chart the course which guides us.

All of the Court's decisions have been governed by two earlier fundamental precepts: that due process is not a fixed concept, but varies according to "the precise nature of the government function involved as well as of the private interest . . . affected . . . . " *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 895 (1961) and that the right to due process arises when one is "condemned to suffer a grievous loss" *Joint Anti-Fascist Committee* v. *McGrath,* 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring).

The significant determinations on the subject include *Goldberg* v. *Kelly,* 397 U.S. 254 (1970) (welfare recipient cannot be deprived of benefits without evidentiary hearing subject to specified procedures); *Sniadach* v. *Family Fi-*

nance Corp., 395 U.S. 337 (1969) (debtor's property cannot be garnished without notice and prior hearing); *Wisconsin* v. *Constantineau*, 400 U.S. 433 (1971) (statute providing for public posting of names of "excessive drinkers" of liquor may not be posted, to prevent purchase, without notice or hearing); *Bell* v. *Burson*, 402 U.S. 535 (1971) (license of uninsured motorist involved in an accident may not be suspended without hearing on issue of fault); *Fuentes* v. *Shevin*, 407 U.S. 67 (1972) (property may not be replevined in *ex parte* proceedings), and *Board of Regents* v. *Roth*, 408 U.S. 564 (1972) (untenured teacher may not suffer nonrenewal of contract without hearing where the action would deprive him of "liberty" or "property".)

The recent rulings in *Morrissey* v. *Brewer*, 408 U.S. 471 (1972), and *Gagnon* v. *Scarpelli*, 411 U.S. 778 (1973), are closer to the subject at hand. In *Morrissey*, the Court defined the minimal requirements of due process in parole revocation cases to include a preliminary hearing and a revocation hearing which afford (1) written notice of the claimed violations of parole; (2) disclosure to the parolee of the evidence against him; (3) opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (5) a "neutral and detached" hearing body, (whose members, however, need not be judicial officers or lawyers); and (6) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. The court "emphasized" that a parole revocation proceeding was not to be equated with a criminal proceeding, but was a "narrow inquiry" in which

the process should be flexible enough to consider material not admissible in a criminal trial. 408 U.S. at 489.

The *Morrissey* Court declined to decide whether a parolee was entitled to assistance of counsel (*id.*), but quoted §305.15(1) of the Model Penal Code (Proposed Official Draft 1962), which provides that "[t]he institutional parole staff shall render reasonable aid to the parolee in preparation for the hearing and he shall be permitted to advise which his own legal counsel" (*id.*, n. 16).

In *Gagnon,* decided last term—only a year after *Morrissey*—the court took up the question of the right to counsel in probation revocation proceedings, which it equated conceptually with parole revocation.

Distinguishing a revocation hearing from a criminal trial which "[i]s an adversary proceeding with its own unique characteristics" (411 U.S. at 789) and from a juvenile delinquency proceeding "which, while denominated civil [is] functionally akin to a criminal trial" (*id.*, n. 12), the Court concluded that no inflexible constitutional rule affording counsel was justified in revocation cases, but, "rather, that the decision as to the need for counsel must be made on a case-by-case basis in the exercise of a sound discretion by the state authority charged with responsibility for administering the . . . system". *Id.* at 790. However, while recognizing the need for "flexibility" in revocation cases (*id.* at 788), the Court did not leave it at that. Although it expressed the impossibility of formulating a precise set of guidelines, it designated categories of cases in which the right to counsel should be granted. As the Court put it:

> "Presumptively, it may be said that counsel should be provided in cases where, after being informed of his

right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present. In passing on a request for the appointment of counsel, the responsible agency also should consider, especially in doubtful cases, whether the probationer appears to be capable of speaking effectively for himself. In every case in which a request for counsel at a preliminary or final hearing is refused, the grounds for refusal should be stated succinctly in the record." *Id.* at 790-91.

In this Circuit, the leading decision delineating the shape of due process in prisoner discipline cases is *Sostre* v. *McGinnis,* 442 F.2d 178 (2d Cir. 1971). In *Sostre,* the District Court had ruled that a prisoner could not be deprived of good time credit without (1) written notice of the charges, (2) a recorded hearing before a disinterested official with a chance to cross-examine adverse witnesses and present his own, (3) the right to retain counsel or counsel-substitute and (4) a written decision. *Sostre* v. *Rockefeller,* 312 F. Supp. 863, 872 (S.D.N.Y. 1970). The Court of Appeals disagreed "that each of the procedural elements incorporated in [the] mandatory injunction are necessary constitutional ingredients of every proceeding

resulting in serious discipline of a prisoner." 442 F.2d at 198. The court stated its view of the matter this way:

> "... In thus rejecting Judge Motley's conclusions, however, we are not to be understood as disapproving the judgment of many courts that our constitutional scheme does not contemplate that society may commit lawbreakers to the capricious and arbitrary actions of prison officials. If substantial deprivations are to be visited upon a prisoner, it is wise that such action should at least be premised on facts rationally determined. This is not a concept without meaning. In most cases it would probably be difficult to find an inquiry minimally fair and rational unless the prisoner were confronted with the accusation, informed of the evidence against him, see Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed. 2d 62 (1965); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), and afforded a reasonable opportunity to explain his actions. See Nolan v. Scafati, 306 F. Supp. 1 (D. Mass. 1969) (Wyzanski, J.)." *Id.* (footnotes omitted).

At first blush it might appear that the limits of the Circuit Court's ruling in *Sostre* foreclose granting plaintiffs the panoply of rights they seek here. There are a number of reasons, however, which lead to a contrary conclusion. The first is the cautious nature of the language of *Sostre* itself, and in particular its observation that "each of the procedural elements incorporated in [the] mandatory injunction are [not] necessary constitutional ingredients of every proceeding resulting in serious discipline of

a prisoner." *Id.* A panel of the court has this year construed that passage as follows:

> "In providing these minima [*i.e.*, those which were allowed in *Sostre*] and rejecting *universal* application of those safeguards required by Judge Motley, however, we did not state that none of the rejected safeguards were ever to be constitutionally required in any case;" *Nieves* v. *Oswald,* 477 F.2d 1109, 1113 (2d Cir. 1973). (emphasis added) (footnote omitted).

Second, there is an important factual distinction between this case and *Sostre*: that Sostre was a convicted felon, while the plaintiffs here are untried detainees. In *Sostre,* the court hesitated to impose due process requirements which might deter the rehabilitative process. As the court stated:

> "It would be mere speculation for us to decree that the effect of equipping prisoners with more elaborate constitutional weapons against the administration of discipline would be more soothing to the prison atmosphere and rehabilitative of the prisoner or, on the other hand, more disquieting and destructive of remedial ends." 442 F.2d at 197.

In the case at hand, no considerations of rehabilitation exist: The sole aim of imposing discipline in the case of a detainee is to preserve order in the institution. We deal, therefore, with a situation in which the government's function is markedly narrower than in *Sostre,* while the detainee-prisoner's interest is undiminished.

Finally, we note that *Sostre* antedates some of the Supreme Court opinions referred to above, in particular *Morrissey* and *Gagnon,* as well as those of lower courts referred to below. The questions left open by the flexible language of *Sostre* noted above are answered in these later cases.

A deluge of decisions has granted prisoners in disciplinary proceedings, the rights which plaintiffs here seek: (1) written notice of the charge, (2) the right to confront accusers and to call and cross-examine witnesses, (3) written findings and reasons for the decision and (4) the right to counsel or counsel-substitute. While not every opinion accords each of the rights sought, many of them do accord all such rights and all accord some. They include *McDonnell* v. *Wolff,* 483 F.2d 1059 (8th Cir. 1973); *United States ex rel. Miller* v. *Twomey,* 479 F.2d 701 (7th Cir. 1973); *Crafton* v. *Luttrell,* No. 6615 (M.D. Tenn., September 13, 1973); *Inmate 24394* v. *Schoen,* 363 F. Supp. 683 (D. Minn. 1973); *Crowe* v. *Erickson,* Civ. 72-4101 (D.S.D., August 24, 1973); *Pearson* v. *Townsend,* 362 F. Supp. 207 (D.S.C. 1973); *Rinehart* v. *Brewer,* 360 F. Supp. 105 (S.D. Iowa 1973); *Batchelder* v. *Geary,* No. C-71-2017 (N.D. Cal., April 16, 1973); *Collins* v. *Hancock,* Civil 72-114 (D. N.H., February 23, 1973); *Sands* v. *Wainwright,* 357 F. Supp. 1062 (M.D. Fla. 1973); *Worley* v. *Bounds,* 355 F. Supp. 115 (W.D.N.C. 1973); *Inmates of Milwaukee County Jail* v. *Petersen,* 353 F. Supp. 1157 (E.D. Wis. 1973); *Collins* v. *Schoonfield, supra,* Civ. #71-500 (D. Md., decree of July 27, 1972); *Colligan* v. *United States,* 349 F. Supp. 1233 (E.D. Mich. 1972); *Stewart* v. *Jozwiak,* 346 F. Supp. 1062 (E.D. Wis. 1972); *United States ex rel. Neal* v. *Wolfe,* 346 F. Supp. 569 (E.D. Pa. 1972); *Landman* v. *Royster,*

333 F. Supp. 621 (E.D. Va. 1971); *Clutchette* v. *Procunier*, 328 F. Supp. 767 (N.D. Cal. 1971) and *Bundy* v. *Cannon*, 328 F. Supp. 165 (D. Md. 1971).

Except for the right to counsel, as to which limitations discussed below are sometimes expressed, these cases emphatically establish that the rights which plaintiffs seek are now recognized as constitutionally required elements of due process. The rights to written notice of the charge (accorded in New York State prisons, 7 NYCRR §§253.2(b) and 253.3(b)) confrontation of the accuser, and written decision and findings of fact have been required by nearly every court presented with the issues. While the formulas vary, the majority of decisions considering the subject have required hearing by an impartial tribunal, at least to the extent of prohibiting a single supervisor from acting both as investigating and hearing officer. See, for example, *Bundy* v. *Cannon, supra; Colligan* v. *United States, supra*, 349 F. Supp. at 1237 and *Collins* v. *Schoonfield, supra* (decree of July 27, 1972, at 8).

Decisions are more divided as to the right to counsel or counsel-substitute in disciplinary proceedings; but the right has recently been recognized by the First Circuit as constitutionally required in a comprehensive opinion by Judge Coffin. *Palmigiano* v. *Baxter*, No. 73-1088 (1st Cir., November 16, 1973). Among the opinions cited above which agree are *Collins* v. *Schoonfield, supra; Sands* v. *Wainwright, supra; Landman* v. *Royster, supra; Clutchette* v. *Procunier, supra*, and *Jackson* v. *Hendrick, supra*.

In the light of this massive advance in the recognition of prisoners' rights, we believe that in all cases of serious

charges, *i.e.*, threatening "grievous loss," a detainee is entitled to all of the rights sought here, with limitations only on the right to counsel or counsel-substitute. Counsel or counsel-substitute must be allowed (1) in accord with the rule of *Gagnon* v. *Scarpelli, supra,* in cases of seriously disputed infractions, substantial mitigation or which involve difficulty of presentation because of the complex nature of the charge or because the detainee appears incapable of speaking effectively for himself; and (2) where the charges may result in criminal prosecution *Nieves* v. *Oswald, supra,* 477 F.2d 1109, 1113 (2d Cir. 1973).

We recognize that modification of disciplinary procedures at an institution as large as MHD may present difficulties, and that significant questions of definition remain, (such as that of "serious charges") or the extent to which the Department should be permitted to exercise discretion in executing the modified procedures. These important issues must be left for the precise delineation of a decree after presentation of the views of the parties.

B: *Deprivation of Mail and Visiting Privileges*:

§4.49e of the Department's regulations authorizes, as punishment for a disciplinary infraction, "[l]oss of one or more privileges, temporarily or permanently". Under the regulation, deprivation of mail and visiting privileges (except correspondence with or visits from an attorney) may be imposed.

Plaintiffs attack the constitutional validity of this deprivation on several grounds. They argue that the policy violates due process, since it is not the least restrictive

method necessary to preserve institutional security (and impliedly that it is gratuitous, hence cruel and unusual punishment); that it violates due process because it interferes with a detainee's access to the courts, by impeding his ability to prepare his defense on the criminal charge for which he is detained; and that it violates the equal protection clause, because, without a rational basis for distinction, it denies MHD detainees rights accorded to convicted New York State prisoners by State Regulation (7 NY CRR Chap. VI §301.6(a)).

The defendants answer that the Department's regulation and MHD procedures are a valid exercise of the State's power to punish—and it must be remembered that we are dealing here not with limits on the deprivation of the rights of an inmate who is merely in custody awaiting trial, but of one who has been found guilty of an infraction while in custody.

It is unnecessary to determine whether the City's contentions might be supportable under other circumstances, because we are persuaded that the equal protection clause bars the City from imposing on its inmates more severe punishment than may be imposed on convicted New York prisoners.

7 N.Y.C.R.R., Chapter VI, §301.6, which governs the privileges of State prisoners, reads:

> "§301.6 *Correspondence & Visiting* (a) No inmate shall be deprived of the correspondence or visiting privileges available to inmates in the general population. (b) Visits for persons in segregation units shall be in accordance with any special precautions deemed neces-

> sary or appropriate by the Superintendent of the facility, but no employee shall be permitted to monitor the content of conversation between an inmate and his legal or spiritual advisor."

Although this Regulation, like the State Department of Correction's policy referred to in *Wright* v. *McMann,* 460 F.2d 126 (2d Cir. 1972), may grant a prisoner rights which the constitution does not require, the City cannot, as a creature of the State, deny to its inmates the rights granted to State prisoners. No evidence in the record establishes any basis for distinction between the two classes, and the defendants have offered no rationale for the difference. To the contrary it can well be contended, that the State Department is entitled to greater latitude in curbing the rights of its prisoners, since its interest is to punish and rehabilitate, while that of the City is solely to protect the security of the institution and assure the appearance of a detainee at trial.

Although this determination is dispositive, we add that a respectable argument can be made that interference with a detainee's mail and visiting privileges by impeding his ability to prepare his defense, is suspect under the Sixth Amendment, since without access to family or friends—even if he has contact with his lawyer—he may be deprived of the opportunity to secure critical information, evidence or witnesses on his behalf.

In any event, we hold that the City may not as a matter of discipline limit the mail and visiting privileges of detainees to an extent greater than the minor limit allowed in 7 NYCRR, Chapter VI, §301.6.

8. *Correspondence*:

It is the City Department's policy to open and on occasion read outside a detainee's presence, his mail from courts, attorneys and public officials. Plaintiffs contend that this procedure violates their First and Sixth Amendment rights. We agree.

As far back as 1921, Justice Holmes, with characteristic insight, pointed out that "the use of the mails is almost as much a part of free speech as the right to use our tongues . . . ." *Milwaukee Social Democratic Publishing Co.* v. *Burleson,* 255 U.S. 407, 437 (1921) (dissenting opinion) quoted with approval in *Blount* v. *Rizzi,* 400 U.S. 410, 416 (1971).

The Court of Appeals of this Circuit has most recently observed:

> "As to mail to and from counsel, this court had already made it very clear that prison officials who would interfere with first amendment rights bear a heavy burden to show abuse in terms of transmittal of contraband or the laying of plans for some unlawful scheme." *Wilkinson* v. *Skinner,* 462 F.2d 670, 671 (1972) (citations omitted).

Wilkinson was a pre-trial detainee whose mail from counsel and others had been censored or barred from the mail by jail authorities under the authority of the then controlling state regulation. Before Wilkinson's case reached the Court of Appeals, the state amended its regulations (7 NYCRR, §5100.10(e)) to forbid examination or censorship of the content of correspondence between detainees and courts, attorneys or public officials, while permitting in-

spection for contraband in the presence of the detainee. The Court of Appeals held that the amended regulation met the constitutional requirements of the First and Sixth Amendments, and it is clear that the greater infringement on the rights of MHD detainees does not.

See also Smith v. *Robbins,* 454 F.2d 696 (1st Cir. 1972), *aff'g in relevant part* 328 F. Supp. 162 (D. Me. 1971); *Inmates of Milwaukee County Jail* v. *Petersen, supra,* 353 F. Supp. at 1167; *Rhem* v. *McGrath,* 326 F. Supp. 681, 690-1 (S.D.N.Y. 1971); *Palmigiano* v. *Travisono,* 317 F. Supp. 776 (D.R.I. 1970) and Note, Prison Mail Censorship and The First Amendment, 81 Yale L.J. 87 (1971).

Furthermore, although the argument is not pressed by plaintiffs, we believe that, as in the instances of deprivation of mail and visiting privileges discussed above the equal protection clause requires the City defendants to afford detainees the same mail rights as those granted State prisoners by 7 NYCRR §5100.10(e). The City defendants must therefore alter their policy to grant MHD inmates the rights secured by 7 NYCRR, §5100.10(e).

A detainee's right to receive mail is also limited by the rule which prevents receipt of any publication except those sent directly by the publisher. We have found that the evidence does not support the claim that this policy is necessary for security purposes. Although it is true that contraband may be smuggled within the pages of a magazine, or in hollowed books, the risk is absolutely controllable by inspection of incoming mail. Thus the true reason for the rule is to promote economy and administrative convenience. Aside from the fact that the policy imposes a significant hardship on inmates, most of whom are poor, by requiring

them to buy books and magazines which they could otherwise receive without cost from friends or relatives, the rationale of economy and administrative convenience is unsupportable, particularly where the "preferred" rights secured by the First Amendment are at stake.

> "[T]he Constitution protects the right to receive information and ideas. 'This freedom [of speech and press] . . . necessarily protects the right to receive . . .' [citing cases]. This right to receive information and ideas, regardless of their social worth, . . . is fundamental to our free society." *Stanley* v. *Georgia,* 394 U.S. 557, 564 (1969).

We agree with the view, expressed in similar circumstances to those here, that a detainee's

> "right to exercise free speech under the First Amendment carries over into confinement pending bail or disposition of charges the concomitant of access to all reading material not unlawful per se, until it is shown that the exercise of such right reasonably creates 'a clear and present danger of a breach of prison discipline, or some substantial interference with orderly institutional administration." *Hodge* v. *Dodd,* Civ. No. 16171 (N.D. Ga., March 5, 1973), quoting *Fortune Society* v. *McGinness,* 319 F. Supp. 901 (S.D.N.Y. 1970)).

See also Inmates of Milwaukee v. *Petersen, supra,* 353 F. Supp. at 1168-9; *Collins* v. *Schoonfield, supra,* 344 F. Supp. at 281; *Jones* v. *Wittenberg, supra,* 330 F. Supp. at 719-20;

Seale v. *Manson, supra,* 326 F. Supp. at 1382; and *United States ex rel. Mancone* v. *Corso,* 73-C-1389 (E.D.N.Y., November 8, 1973).

The record here supports no such showing, and the policy is therefore constitutionally invalid.

III.

At the outset of the case the State defendants moved to dismiss the complaint on the grounds that it stated no claim as to them upon which relief could be granted. The motion was denied by opinion filed December 16, 1971, on grounds that under Sections 46 and 504 of the New York Correction Law, the State Commission of Correction and the Presiding Justice of the Appellate Division are respectively charged with responsibilities at MHD; and that under Section 9(1)(b)[8] of the Executive Law, the Governor has

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[8] The applicable provisions of §§46 and 504 of the Correction Law and §9(1)(b) of the Executive Law read as follows:

Section 46:

"The state commission of correction shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors, and, subject to the direction and control of the commissioner of correction, shall: (1) Aid in securing the just, humane and economic administration of all institutions subject to its jurisdiction; . . . . (5) Secure the best sanitary conditions of the buildings and protect and preserve the health of the inmates; . . . (8) Close any jail . . . which is unsafe, unsanitary or . . . which has not adhered to or complied with the rules or regulations promulgated . . . by the state commission of correction pursuant to subdivision seven-a of this section."

Section 504:

"If . . . the jail becomes unfit or unsafe for the confinement of some or all of the prisoners, civil or criminal, . . . the

authority to take action which could afford relief to the plaintiffs if they prevailed, as they now have.

The State defendants now renew their motion on the grounds that the stipulation between the plaintiffs and the City defendants, formalized in the consent decree, has mooted the grounds for relief sought against the State defendants. In particular, they argue that the only relief which the complaint demands against them is that they use their powers to relieve overcrowding at MHD, and that the provisions of the consent decree ordering a reduction in MHD population have removed this issue from the case.

We do not agree either that the elimination of overcrowding is the sole relief sought against the State defendants or that the consent decree provisions render even that issue moot. Paragraph II of the complaint's prayer for relief requests the court to enjoin *all* defendants from allowing *all* of the conditions complained of, including of course those that are dealt with in this opinion. Moreover, neither the obligations of the State Commission under §46 of the

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presiding justice of the appellate division of the supreme court of the first department, must . . . designate another suitable place within the county, or the jail of a contiguous county, for the confinement of some or all of the prisoners, as the case requires."

Section 9(1)(b):

"The governor, from time to time, whenever he deems it to be in the public interest, is hereby authorized to enter into a contract on behalf of the state for the lease or loan, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state, or the temporary transfer or employment of personnel of the state to any municipal subdivision or other public corporation of the state."

Correction Law to "aid in securing the just [and] humane . . . administration, of all institutions subject to its jurisdiction" and to " . . . protect and preserve the health of the inmates", nor the Presiding Justice's obligation under §504 to designate another place of confinement for prisoners if a jail is "unfit", can be extinguished until the action required by the consent decree has been fulfilled and the unconstitutional conditions described in this opinion have been remedied.

Of course, it is to be assumed that the requirements of the consent decree and of the decree pursuant to this opinion will be carried out timely and in good faith by the City, and it is certainly possible that before that point of finality has been reached the claims against the State defendants can be justly dismissed; but that time is not now.

The New York State Senate Committee's report on the Tombs Disturbances, supra, (at 20) found that:

> "The State Commission has been lax in its responsibilities by failing to utilize the powers it possessed to compel the City to correct the overcrowding and inhumane conditions in its institutions and has thereby contributed, at least in part, to the disturbances of the Tombs."

Moreover, the report quotes the testimony before it of former City Commissioner McGrath (an original defendant in this suit) that "somebody has to mandate the system" and that if someone in authority issued orders to change the system "I think there would be a lot of scrambling and activity and I think that something would happen."

In the light of such authoritative testimony, the Senate Committee's finding and the posture of the case, the State defendants' motion to dismiss is denied without prejudice to renewal at an appropriate time.

IV.

Three years have passed since the "Tombs disturbances". The dismal conditions which still exist in the institution manifestly violate the Constitution and would shock the conscience of any citizen who knew of them. The thousands of inmates who pass through its portals each year, more than 69,000 in 1972 and 49,000 in the first eleven months of 1973,[9] are in some instances subjected to cruel punishment, although the Constitution forbids any punishment of detainees, and are deprived of due process and equal protection of the laws. This state of affairs exists in spite of the humane efforts of the present Departmental administration to afford the "tolerable living conditions" to which prisoners are entitled by law. It exists because the public through its government has not assumed its responsibilities to provide a decent environment within jail walls. Courts are the agency which must enforce the execution of public responsibilities when other branches of government fail to do so: "courts sit not to supervise prisons but to enforce the constitutional rights of all 'persons,' including prisoners." *Cruz* v. *Beto,* 405 U.S. 319, 321 (1972).

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[9] According to oral advice received January 4, 1973, from James Latham, counsel to the Department of Corrections, 69,375 persons were admitted to and 69,641 were discharged from MHD in 1972 and from January 1st to November 30th, 1973, 49,529 were admitted and 49,971 were discharged.

In 1970, the Law Enforcement Assistance Administration conducted the first national census of American jails.[10] According to the study, an average of 160,000 persons, that is one out of every 1380 Americans, is in jail every day of the year. Some students of the subject estimate that, during the course of a year, jails confine at least 1,500,000 and perhaps as many as 5,500,000 Americans. "Prisoners in America," *supra,* at 55 (published by the American Assembly of Columbia Univ. 1973). The chilling impact of these numbers dictates the necessity to come to grips with the constitutionality of conditions in the jails of America.

To remedy the violations at MHD will cost money and will require deliberate and careful thought and planning. The framing of a decree will demand the considered guidance of all concerned. The parties are instructed to prepare for a conference to determine the contents of an order consistent with this opinion.

Dated: New York, New York
January 7th, 1974.

MORRIS E. LASKER
U.S.D.J.

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[10] 4,037 jails were found to meet LEAA's definition of a jail; i.e., "any facility operated by a unit of local government for the detention or correction of adults suspected or convicted of a crime and which has authority to detain longer than forty-eight hours." The definition excludes police lockups, jails in municipalities reporting fewer than 1,000 persons and state-controlled facilities for convicted short term offenders—facilities such as reformatories, state farms and road camps. See *Prisoners in America, supra* at 55.

District Court Judgment
Filed March 21, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES RHEM, ROBERT FREELY, LEO ROBINSON and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; PETER SCHAEFER, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; MALCOLM WILSON, Governor, State of New York; and OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

This action came on to be tried before the Court, Honorable Morris E. Lasker, District Judge, presiding, and the issues having been duly tried, and the Court having made and filed findings of fact and conclusions of law, all dated January 7, 1974, and the Court expressly determining that there is no just reason for delay in the entry of final judg-

ment as to the issues of correspondence and discipline, it is hereby

ORDERED, ADJUDGED and DECREED that defendants Malcolm, Schaefer and Beame, and their agents and employees, be and hereby are enjoined from:

1. Reading any incoming mail addressed to plaintiffs from any court, attorney or public official, or any employee thereof acting in an official capacity;

2. Opening any incoming mail addressed to plaintiffs from any court, attorney or public official, or any employee thereof acting in an official capacity, except in the presence of the addressee;

3. Refusing to deliver to plaintiffs any book, periodical or other reading material on the ground that it has not been sent directly from a publisher; provided, however, that nothing contained in this paragraph shall prohibit defendants from inspecting for contraband said book, periodical or other reading material in order to protect the security of the institution.

4. Subjecting plaintiffs to any punishment for any disciplinary infractions without first according plaintiffs institutional hearings in accordance with the procedures set forth in Schedule A, annexed hereto;

5. Depriving plaintiffs found guilty of institutional infractions of the right to receive visitors and send and receive mail; and it is further

District Court Judgment

ORDERED, ADJUDGED and DECREED that, it appearing that further evidence is necessary to determine an appropriate program of contact visiting, and of the hours of visiting, numbers of visitors and days upon which visiting should occur, a hearing will be held by the Court on the 27 day of March, 1974, at 10 AM in Room 619 of the Court House at which the testimony of witnesses presented by the parties shall be taken and any relevant evidence considered; and it is further

ORDERED, ADJUDGED and DECREED that defendants Malcolm, Schaefer and Beame shall submit to the Court and counsel for plaintiffs within thirty (30) days of entry of this judgment a comprehensive and detailed plan for the elimination of all conditions and practices declared to be in violation of the Constitution of the United States by the Court's opinion of January 7, 1974 as to which final judgment has not been entered herein; and it is further

ORDERED, ADJUDGED and DECREED that within thirty (30) days of submission of the above-mentioned plan, counsel for plaintiffs shall submit to the Court and to counsel for defendants any objections or comments thereto.

Dated: New York, New York
March 19th, 1974.

MORRIS E. LASKER
U.S.D.J.

Judgment entered this
22nd day of March, 1974.

RAYMOND F. BURGHARDT
Clerk

SCHEDULE A ANNEXED TO DISTRICT COURT JUDGMENT

Disciplinary Procedures for the Manhattan House of Detention for Men

In addition to according the accused all rights guaranteed under Rule 4.49 of the Rules and Regulations of the Department of Correction of the City of New York, the following procedures shall be followed:

1. *Notice*

No later than thirty-six (36) hours prior to any institutional disciplinary hearing, the accused shall be given a written notice stating:

a) the precise institutional rule allegedly violated;

b) a summary of the factual allegations upon which the charge is based;

c) the maximum penalty which may be imposed should the accused be found guilty of the infraction;

d) the date and time when a disciplinary hearing will be held; and

e) all rights which the accused will have in the disciplinary proceeding, as set forth herein.

2. *Hearings*

At all institutional disciplinary hearings, the accused shall have the right to:

a) call witnesses in his own behalf; and

b) confront and cross examine all individuals who have given information adverse to him.

3. *Counsel or counsel-substitute.*

The accused shall have the right to be represented by counsel, or if he so elects, counsel-substitute in all disciplinary proceedings where

a) The charge is one which may be punished by punitive segregation or loss of physical exercise periods, or which may be disclosed to the sentencing court in a criminal case, and the accused either seriously disputes the charge or states that he has substantial mitigating factors to present; or

b) There will be difficulty in presenting a defense because of the complexity of the charge or because the accused appears incapable of speaking effectively for himself; or

c) The charge describes an act which constitutes a crime.

"Counsel substitute" may include any law student or law school graduate awaiting the result of a bar examination and, where neither a member of the bar, law student or law school graduate is reasonably available, may include a fellow inmate.

4. *Hearing Officer*

The individual presiding at the disciplinary hearing shall be impartial and shall not have taken part in any prior investigation of the charge.

Schedule A Annexed to District Court Opinion

5. *Written Findings and Reasons*

Within twenty-four (24) hours of the conclusion of every disciplinary hearing at which an inmate is found guilty of an infraction, the hearing officer shall prepare and give to the inmate a written statement setting forth findings of fact and reasons for the decision.

Notice of Appeal
Filed April 19, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES RHEM, ROBERT FREELY, LEO ROBINSON and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; PETER SCHAEFER, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; MALCOLM WILSON, Governor, State of New York; and OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

SIRS:

NOTICE is hereby given that BENJAMIN J. MALCOLM, PETER SCHAEFER, and ABRAHAM D. BEAME hereby appeal to the United States Court of Appeals for the Second Circuit from the order of Hon. Morris E. Lasker entered herein on or about March 22, 1974 and this appeal is taken from

each and every part of said order as well as from the whole thereof.

Apr 19 1974

Yours, etc.

ADRIAN P. BURKE
Corporation Counsel
of The City of New York
Attorney for Appellants
Office & P.O. Address:
Municipal Building
New York, N.Y. 10007

By .....
STANLEY BUCHSBAUM
First Assistant Corporation Counsel

To:

WILLIAM E. HELLERSTEIN, Esq.
The Legal Aid Society
119 Fifth Avenue
New York, N.Y. 10003

HON. LOUIS J. LEFKOWITZ
Attorney-General of the State of New York
Attorney for State Defendants
Two World Trade Center
New York, N.Y.

District Court Memorandum
Filed July 11, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES RHEM, ROBERT FREELY, LEO ROBINSON, and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; PETER SCHAEFER, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; and MALCOLM WILSON, Governor, State of New York; OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

APPEARANCES:

THE LEGAL AID SOCIETY
15 Park Row
New York, New York 10038
Attorneys for Plaintiffs

Of Counsel: WILLIAM E. HELLERSTEIN, Esq.
JOEL BERGER, Esq.
STEVEN A. HERMAN, Esq.

District Court Memorandum

ADRIAN P. BURKE, Esq.
Corporation Counsel
Municipal Building
New York, New York 10007
Attorneys for Defendants BENJAMIN J. MALCOLM, PETER SCHAEFER and ABRAHAM D. BEAME

Of Counsel: LEONARD BERNIKOW, Esq.

LOUIS J. LEFKOWITZ, Esq.
Attorney General of the State of New York
World Trade Center II
New York, New York 10047
Attorneys for Defendants PETER PREISER, MALCOLM WILSON and OWEN MCGIVERN

Of Counsel: DAVID BERMAN, Esq.

LASKER, D.J.

On January 7, 1974, we filed an opinion holding that certain conditions existing at the Manhattan House of Detention (MHD) deprived its inmates, 80% of whom were untried detainees, of their constitutional rights. 371 F. Supp. 594. The matters in question included excessive imposition of maximum security conditions, limitations on visiting rights, the right to exercise and recreation; the lack of a "tolerable living environment" caused by excessive heat and noise, insufficient ventilation and inability to see out of the building; the refusal to give an inmate the option to be locked in his cell rather than in a common area; inadequate disciplinary procedures; and interfer-

ence with correspondence rights and the right to receive publications. Our detailed opinion followed a trial of several weeks, as well as through pre- and post-trial briefing by both sides and the disposition, by a stipulation of settlement and a consent decree (entered August 2, 1973), of issues essentially relating to overcrowding, unsanitary conditions and inadequate medical care. Great progress has been made in reducing overcrowding. The population of MHD is now only 522, which is substantially below capacity. However, none of the other provisions of the consent decree has been fully executed although the due dates for their performance are long past.

We concluded the opinion of January 7, 1974, by stating:

> "To remedy the violations at MHD will cost money and will require deliberate and careful thought and planning. The framing of a decree will demand the considered guidance of all concerned."

We instructed the parties to prepare for a conference to determine the contents of an order to implement the opinion. 371 F. Supp. at 637.

The history of the case since then has been one of frustration largely caused by the City defendants' delay and the absence or incompleteness of reports or plans of performance which they were ordered to submit, as we detail below.

Solely as a result of such noncompliance on the part of the City defendants, we are today entering an order that the City defendants close MHD within thirty days. The order is subject to reconsideration at such time as the

City defendants submit a "comprehensive, detailed and specific plan for the prompt elimination" of all conditions at MHD which we found in our earlier opinion to deprive the inmates of their constitutional rights and which still exist.

In view of the seriousness of the order which we are entering, it is appropriate to review in some detail the history of the case since the filing of our opinion six months ago.

On January 18, 1974, the parties conferred with the court as instructed in the January 7 opinion. At that time, plaintiffs submitted a proposed judgment, noticed for February 5, 1974, intended to implement the decision. Plaintiffs' proposed judgment provided that within thirty days the defendants submit a comprehensive and detailed plan for elimination of the conditions which the court found to be unconstitutional, as well as for immediate entry of final judgment on the questions of correspondence, receipt of publications, disciplinary procedures, visiting schedules and "optional lockout." The latter group of issues, on the whole, required little or no physical rearrangements at MHD or expenditure of funds, while it was understood that the former group, those that are still unperformed, such as the institution of a classification plan to avoid excessive imposition of maximum security conditions, provision for contact visits, and increased exercise and recreation facilities, as well as the remedying of intolerable environmental conditions, would demand planning, time and money.

In response to a request of the Corporation Counsel, dated February 11, 1974, the court granted the City an

extension to February 14th to submit a counter-order. Defendants subsequently submitted a counter-order, which disappointingly, failed to deal with the critical issues which required money and planning.

On February 22, 1974, the court convened the parties for a further conference and thereafter, on February 25, 1974, directed the City defendants to submit by March 4, 1974:

> "comments as to the proposed order earlier submitted by plaintiffs' counsel, including any reasons why the terms of the proposed order do not conform to the court's opinion of January 7, 1974, or why any of the terms of the proposed order are impracticable of accomplishment at this time, together with suggestions for alternatives replacing any terms objected to."

In response, the City submitted a "Memorandum of Law," which, however, failed to include a comprehensive plan as to the issues which could not be immediately implemented. Instead, the Memorandum remarked that "[t]he thirty day request for a submission of a comprehensive and detailed plan is not feasible" and recommended a further conference "to discuss the setting up of some reasonable and meaningful target date for such a plan."

Thereafter, on March 11, 1974, plaintiffs submitted a revised proposed judgment which contained modifications of the earlier version, but preserved its substance.

On March 19, 1974, the court signed the judgment now in effect, entered March 22, 1974. It made specific provisions as to inmate correspondence, receipt of publications

and disciplinary provisions; set a date for a further evidentiary hearing as to arrangements for contact visits, and as to other issues ordered the City defendants, within thirty days (that is by April 21, 1974), to submit "a comprehensive and detailed plan for the elimination of all conditions and practices declared to be in violation of the Constitution of the United States by the Court's opinion of January 7, 1974 as to which final judgment has not been entered herein". On April 22nd, over the objection of plaintiffs, the court granted the City defendants a further extension to April 29, 1974, to file the required plan.

On April 29, 1974, the City defendants submitted a proposed plan which, however, was deficient with regard to exercise and recreation, contact visits, elimination of noise, provision of adequate ventilation or clear windows, and which, for the first time, advised the court that the defendants were "exploring the possibility of closing the MHD," although no target date was specified. The Corporation Counsel's letter transmitting the plan specified that "[i]n submitting said response the defendants do not acknowledge liability nor adopt the submission as the appropriate solution to the controversy herein."

On May 14th, the court again convened the parties and at the conference ordered the defendants to submit, within one week, a statement of the City's position as to the closing of MHD and to indicate a deadline by which a final decision would be reached. By letter of May 15th, the City defendants informed the court that a decision would be reached by June 15th.

In the interim, at a conference on May 29th, the City defendants were ordered to submit specific plans for physi-

cal alterations of MHD necessary to carry out the improvements required by both the opinion and the consent decree. They responded June 10th by a letter containing a "shopping list" which had been submitted to the Bureau of the Budget and which indicated that funding had been approved for renovation of the fifth and eighth floors (as required by the consent decree), but not for 1) renovation of visiting facilities for contact visits, 2) covering concrete floors with vinyl asbestos tile, 3) installation of a low level sound system, 4) acoustical treatment of ceilings and walls, 5) upgrading of the heating and ventilation system and 6) renovation of the tenth and basement floors, all of which were required to implement the opinion. The letter also indicated that funding had not yet been approved for 1) installation of a laundry system for inmate use, and 2) development of additional recreation and program space on inmate housing floors required by the consent decree.

At a conference on June 19th, the attorney for the City defendants stated that the City had reached a final determination to continue to operate MHD, but not to submit the comprehensive plan required by the court's order. By letter of June 20, 1974, the court ordered the City defendants to report in writing by June 24th the status of their compliance with the court's March judgment, including, in particular, the requirement that the defendants submit to the court the comprehensive plan referred to above. A copy of the court's letter is attached to our order filed today as Exhibit B. On June 24th, defendants informed the court by letter, a copy of which is attached to our order filed today as Exhibit C, that, with regard to such key issues as contact visiting, elimination of noise, inadequate

ventilation, excessive heat, the defendants "cannot provide a time-table as to when this work will commence." It should be noted in this connection that the physical conditions in question constituted a significant factor leading to the conclusion stated in our opinion of January, 1974, that the inmates were being deprived of their constitutional rights. For example, as we stated in our earlier opinion, 371 F. Supp. at 607:

> "Noise levels are intolerable. For example, on the eighth floor (a housing floor) a team of experts from the City's Environmental Protection Agency (EPA) which recently studied the situation with sophisticated noise-measuring instruments, found the volume of noise to be at least that of the New York City subways system (Transcript 1018). It must be emphasized that such levels are fairly constant during all waking hours."

Yet the City advises the court not only that it cannot provide a time-table as to when the required work will be completed but even when it will commence.

Thus we are regrettably at a crossroads. As we have indicated above, we recognize at the conclusion of our January opinion that the changes at MHD necessary to assure constitutional standards would require time, money and planning. We have made every effort to afford the City defendants the time necessary to submit a plan and to find the money; yet six months later neither has been produced. While we sympathize with the problems faced by those who are administering City affairs in an economic climate described only yesterday by the City Comptroller

as a "liquidity crisis," the law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty. The City's decision not to expend the necessary funds represents its determination of the priority to be given to the different items in its budget. However, expenditures not required by the Constitution may not be given priority over those needed to remedy a deprivation of constitutional rights. This is why the courts have reiterated that no governmental unit may be excused from according its citizens their constitutional rights because of a lack of funds. *See, e.g. Goldberg* v. *Kelly,* 397 U.S. 254, 266 (1970). Justice, then Judge, Blackmun plainly put it in *Jackson* v. *Bishop,* 404 F.2d 571, 580 (8th Cir. 1968):

> "Humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerations. . . ."

And one of the earliest cases dealing with the state's obligation to maintain a constitutionally adequate penal system, eloquently and aptly stated:

> "Let there be no mistake in the matter; the obligation of the Respondents to eliminate existing unconstitutionalities does not depend upon what the Legislature may do, or upon what the Governor may do, or, indeed, upon what Respondents may actually be able to accomplish. If Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States." *Holt* v. *Sarver,* 309 F. Supp. 362, 385 (E.D. Ark. 1970), *aff'd,* 442 F.2d 304 (8th Cir. 1971).

District Court Memorandum

In our January opinion, we found that the conditions at MHD "manifestly violate the Constitution and would shock the conscience of any citizen who knew of them." 371 F. Supp. at 636. While some improvements have been made in the conditions which then existed, nevertheless, six months after the filing of our opinion the bulk of those conditions remain as they were. The City has not challenged the court's authority to require it to submit a plan for the elimination of these ills. Nevertheless, however respectful the tone, its posture throughout, confirmed by its letter report of June 24, 1974, constitutes a clear refusal to submit such a plan. It is for this reason and solely for this reason that we are today entering an order that MHD be closed within thirty days unless such a plan is submitted by then. We emphasize that all the City needs to do to avoid whatever difficulties may be caused by closing MHD is to put before the court a program of adequate funding to carry out within a reasonable time the changes required to make MHD a constitutionally acceptable detention facility. Miraculous overnight transformations are not expected, but we cannot accept the City's blank refusal to comply with major portions of our March order.

For purposes of reference, we attach to this memorandum a copy of the order we have signed today.

Dated: New York, New York
July 11th, 1974.

MORRIS E. LASKER
U.S.D.J.

EXHIBIT "A" ANNEXED TO DISTRICT COURT MEMORANDUM FILED JULY 11, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

70 Civ. 3962

JAMES RHEM, ROBERT FREELY, LEO ROBINSON and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; PETER SCHAEFER, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; MALCOLM WILSON, Governor, State of New York; and OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

JUDGMENT

This action came on to be tried before the Court, Honorable Morris E. Lasker, District Judge, presiding, and the issues having been duly tried, and the Court having made and filed findings of fact and conclusions of law, all dated January 7, 1974, and the Court expressly determining that there is no just reason for delay in the entry of final judgment as to the issues of correspondence and discipline, it is hereby

Exhibit "A" Annexed to District Court Memorandum

ORDERED, ADJUDGED and DECREED that defendants Malcolm, Schaefer and Beame, and their agents and employees, be and hereby are enjoined from:

1. Reading any incoming mail addressed to plaintiffs from any court, attorney or public official, or any employee thereof acting in an official capacity;

2. Opening any incoming mail addressed to plaintiffs from any court, attorney or public official, or any employee thereof acting in an official capacity, except in the presence of the addressee;

3. Refusing to deliver to plaintiffs any book, periodical or other reading material on the ground that it has not been sent directly from a publisher; provided, however, that nothing contained in this paragraph shall prohibit defendants from inspecting for contraband said book, periodical or other reading material in order to protect the security of the institution.

4. Subjecting plaintiffs to any punishment for any disciplinary infractions without first according plaintiffs institutional hearings in accordance with the procedures set forth in Schedule A, annexed hereto;

5. Depriving plaintiffs found guilty of institutional infractions of the right to receive visitors and send and receive mail; and it is further

ORDERED, ADJUDGED and DECREED that, it appearing that further evidence is necessary to determine an appropriate program of contact visiting, and of the hours of visiting, numbers of visitors and days upon which visiting should

occur, a hearing will be held by the Court on the 27 day of March, 1974, at 10 AM in Room 619 of the Court House at which the testimony of witnesses presented by the parties shall be taken and any relevant evidenced considered; and it is further

ORDERED, ADJUDGED and DECREED that defendants Malcolm, Schaefer and Beame shall submit to the Court and counsel for plaintiffs within thirty (30) days of entry of this judgment a comprehensive and detailed plan for the elimination of all conditions and practices declared to be in violation of the Constitution of the United States by the Court's opinion of January 7, 1974 as to which final judgment has not been entered herein; and it is further

ORDERED, ADJUDGED and DECREED that within thirty (30) days of submission of the above-mentioned plan, counsel for plaintiffs shall submit to the Court and to counsel for defendants any objections or comments thereto.

Dated: New York, New York
March 19th, 1974.

/s/ MORRIS E. LASKER
Morris E. Lasker
U.S.D.J.

Judgment entered this
22nd day of March, 1974.

/s/ RAYMOND F. BURGHARDT
Clerk

SCHEDULE A

Disciplinary Procedures for the Manhattan House of Detention for Men

In addition to according the accused all rights guaranteed under Rule 4.49 of the Rules and Regulations of the Department of Correction of the City of New York, the following procedures shall be followed:

1. *Notice*

No later than thirty-six (36) hours prior to any institutional disciplinary hearing, the accused shall be given a written notice stating:

a) the precise institutional rule allegedly violated;

b) a summary of the factual allegations upon which the charge is based;

c) the maximum penalty which may be imposed should the accused be found guilty of the infraction;

d) the date and time when a disciplinary hearing will be held; and

e) all rights which the accused will have in the disciplinary proceeding, as set forth herein.

2. *Hearings*

At all institutional disciplinary hearings, the accused shall have the right to:

a) call witnesses in his own behalf; and

b) confront and cross examine all individuals who have given information adverse to him.

Schedule A

3. *Counsel or counsel-substitute.*

The accused shall have the right to be represented by counsel, or if he so elects, counsel-substitute in all disciplinary proceedings where

a) The charge is one which may be punished by punitive segregation or loss of physical exercise periods, or which may be disclosed to the sentencing court in a criminal case, and the accused either seriously disputes the charge or states that he has substantial mitigating factors to present; or

b) There will be difficulty in presenting a defense because of the complexity of the charge or because the accused appears incapable of speaking effectively for himself; or

c) The charge describes an act which constitutes a crime.

"Counsel substitute" may include any law student or law school graduate awaiting the result of a bar examination and, where neither a member of the bar, law student or law school graduate is reasonably available, may include a fellow inmate.

4. *Hearing Officer*

The individual presiding at the disciplinary hearing shall be impartial and shall not have taken part in any prior investigation of the charge.

Schedule A

5. *Written Findings and Reasons*

Within twenty-four (24) hours of the conclusion of every disciplinary hearing at which an inmate is found guilty of an infraction, the hearing officer shall prepare and give to the inmate a written statement setting forth findings of fact and reasons for the decision.

EXHIBIT "B" ANNEXED TO DISTRICT COURT MEMORANDUM FILED JULY 11, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

United States Court House

New York, N. Y. 10007

June 20th, 1974

CHAMBERS OF
JUDGE MORRIS E. LASKER

To: All Counsel

Re: Rhem v. Malcolm
70 Civ. 3962

This is to confirm the decisions arrived at in a conference in Chambers yesterday:

1. The City defendants are ordered to specify to the court in writing, in detail, (with a copy to plaintiffs' counsel) no later than the close of business Monday, June 24th, the status of their compliance with the court's judgment filed March 21, 1974, including in particular:

A. Ordering paragraphs numbered 1 through 5.

B. The provisions of the judgment, at the bottom of Page 2, ordering the defendants, Malcolm, Schaefer and Beame to submit to the court and counsel for plaintiffs a comprehensive and detailed plan for the elimination of all conditions and practices declared to

be in violation of the Constitution of the United States by the court's opinion of January 4, 1974, as to which final judgment has not been entered. The subjects falling within the provisions of this ordering paragraph are:

i) optional lock-in;

ii) contact visiting, visiting hours, visiting numbers and visiting days;

iii) noise, ventilation, heat and windows;

iv) recreation and work opportunities;

v) correction officer staff and

vi) classification system.

2. The City defendants are ordered to specify to the court in writing, in detail, (with a copy to plaintiffs' counsel) no later than the close of business, Friday, June 28th, the status of their compliance with the provisions of the Consent Decree dated August 2, 1973.

Each of the compliance reports ordered to be submitted shall specify as to each item either:

A. That it has been complied with and, if so, how and when.

B. If it has not been complied with in full, whether it has been complied with in part and, if so, to what extent and when compliance will be complete.

C. If it has not been complied with at all, the reasons for non-compliance, the status of efforts towards compliance and the date of anticipated compliance.

Exhibit "B" Annexed to District Court Memorandum

D. As to any item as to which compliance has not occurred and plans for compliance have not been established, the reason for failure to establish such plans, the time by which such plans shall have been made and the time by which compliance is to be expected.

Very truly yours,

MORRIS E. LASKER

MEL/cw

EXHIBIT "C" ANNEXED TO DISTRICT COURT
MEMORANDUM FILED JULY 11, 1974

THE CITY OF
NEW YORK
(Emblem)

LAW DEPARTMENT
Municipal Building
New York, N. Y. 10007

ADRIAN P. BURKE, *Corporation Counsel*

June 24, 1974

Hon. Morris E. Lasker
Judge, United States District Court
Southern District of New York
United States Court House
New York, New York 10007

Re: *Rhem* v. *Malcolm*
70 Civ. 3962

Dear Judge Lasker:

This letter is submitted pursuant to your oral directions in Chambers on June 19, 1974 and your letter to "All Counsel," dated June 20, 1974, regarding the status of the City defendant's compliance with the Court's judgment filed March 21, 1974.

A. Ordering paragraphs numbered 1 through 5

Paragraphs 1, 2, 3 and 5 has been fully complied with. See Institutional Order Nos. 17, 20 and 21 enclosed.

Exhibit "C" Annexed to District Court Memorandum

With regard to Ordering paragraph No. 4, which deals with disciplinary procedures, the directions contained therein have not as yet been implemented. The notice form required by paragraph 1 of Schedule A will be prepared by June 28, 1974. This delay was due to the fact that the Department had to work up an overall approach for each institution so that the disciplinary system would be implemented in all of their detention institutions. This was an administrative task of extreme difficulty.

We will implement the disciplinary procedures outlined in Schedule A in the Manhattan House of Detention not later than July 22, 1974. The Department found it necessary to provide attorneys on behalf of complainants in those instances in which an inmate is represented by an attorney.

B. The provisions of the judgment ordering the submission of a comprehensive and detailed plan.

i) optional lock-in

The implementation of an optional lock-in procedure requires 13 additional correction officers for the purposes of observation and patrol. There is no budget allocation for these officers nor is there a list currently available from which these officers can be appointed even if the allocation were provided. We are informed by the Department of Personnel that a list of Correction Officer eligibles will be established in September of this year.

Exhibit "C" Annexed to District Court Memorandum

ii) contact visiting, visiting hours, visiting numbers and visiting days

Contact visiting requires extensive renovation of present visiting facilities. See iii below for further details. We have previously submitted the department's increased visiting schedules.

iii) noise, ventilation, heat and windows

As in the case of contact visits, the requirements of this part of the judgment requires extensive renovation. While the City would like to go forward with this renovation and has already prepared tentative proposals for such work, and other work as well, which we submitted as attachments to our previous letter, the cost estimate for the entire proposed project is between seventeen and twenty-five million dollars, which is far in excess of what is available under the City's present budget availability. As a result, we cannot provide a time-table as to when this work will commence.

iv) recreation and work opportunities

The roof area is scheduled to be completed on July 30, 1974. The fifth and eighth floor renovation plans have been submitted to the Department of Public Works for detailed drawings and specifications. There have been moneys allocated in the present capital budget for the renovation of the fifth and eighth floors.

Exhibit "C" Annexed to District Court Memorandum

v) correction officer staff

A new post survey completed on March 15, 1974, calls for 272 correction officers at the Manhattan House of Detention. As of May 28, 1974, there were 259 correction officers assigned to this institution. A budget request has been made for the additional number. As mentioned previously, there is no list in existence from which appointments can be made nor has there been any action on our budget request.

vi) classification system

The work done for the development of a classification system has been completed. Because of the legal problems which have arisen over the constitutionality of questions in the classification questionnaire the program is not in operation. We foresee difficulty in meeting the October 1, 1974 deadline for the pilot implementation at the Queens House of Detention. The Department is exploring other alternatives to a classification system which should be implemented on a pilot basis prior to the end of 1974 at the Queens House of Detention. The Department is examining two systems presently in use. One at the Adolescent Reception and Detention Center and the other at the New York City Correctional Institution for Women.

Respectfully yours,

LEONARD BERNIKOW
Assistant Corporation Counsel

CC: Joel Berger, Esq.
Enclosures

District Court Order
Filed July 11, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES RHEM, ROBERT FREELY, LEO ROBINSON and EUGENE NIXON, individually and on behalf of all other persons similarly situated.

Plaintiffs,

—against—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; ARTHUR RUBIN, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; MALCOLM WILSON, Governor, State of New York; and OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

This action came on to be tried before the Court, Honorable Morris E. Lasker, District Judge, presiding, and the issues having been duly tried, and the Court having made and filed findings of fact and conclusions of law, all dated January 7, 1974; and

The Court having directed defendants Malcolm, Schaefer (now Rubin) and Beame, by order entered on March 22,

1974 (annexed hereto as Exhibit A), to submit to the Court and counsel for plaintiffs within thirty (30) days a comprehensive and detailed plan for the elimination of all conditions and practices at the Manhattan House of Detention for Men (the "Tombs") declared to be in violation of the Constitution of the United States by the Court's opinion of January 7, 1974 (except on the issues of correspondence and discipline, as to which final judgment was entered on March 22, 1974); and

The Court having further directed defendants Malcolm, Rubin and Beame, by letter dated June 20, 1974 (annexed hereto as Exhibit B), to specify to the Court in writing, in detail, the status of their compliance with the Court's order of March 22, 1974; and

Defendants Malcolm, Rubin and Beame having replied to the Court, in a letter by their counsel dated June 24, 1974 (annexed hereto as Exhibit C), that it is not within the present budgetary capability of the City of New York to remedy several of the most serious conditions at the Manhattan House of Detention for Men declared unconstitutional in the Court's opinion, and that no timetable can be provided for the future elimination of these conditions, it is hereby

ORDERED, ADJUDGED and DECREED that defendants Malcolm, Rubin and Beame be and hereby are enjoined from confining any persons in the Manhattan House of Detention for Men after August 10, 1974; and it is further

ORDERED, ADJUDGED and DECREED that this order shall be subject to reconsideration by the Court at such time as de-

fendants Malcolm, Rubin and Beame shall submit to the Court a comprehensive, detailed and specific plan for the prompt elimination of all conditions and practices at the Manhattan House of Detention for Men declared unconstitutional by the Court in its opinion of January 7, 1974.

Dated: New York, New York
July 11, 1974

MORRIS E. LASKER
U.S.D.J.

Order to Show Cause

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

Upon the annexed affidavits of Benjamin J. Malcolm and Donald J. Tobias and all the papers and proceedings heretofore had herein, it is

ORDERED that the plaintiffs or their attorneys show cause before the Honorable Morris E. Lasker, at the Federal Courthouse, Foley Square, New York, New York on July 30, 1974 at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not issue herein staying the order of this Court, dated July 11, 1974, enjoining the defendants from confining detainees in the Manhattan House of Detention for Men, pending appeal of such an order, or in the alternative amending the order dated July 11, 1974 in such a manner as to permit defendants to house inmates in said institution until October 31, 1974, and it is further

ORDERED that service of a copy of this order together with the papers on which it is made, upon the plaintiffs on or before the day of July, 1974, be deemed sufficient and that opposing papers, if any, be served upon the municipal defendants on or before the 29 day of July, 1974.

ENTER

.....

United States District Judge

Affidavit of Donald J. Tobias

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

DONALD J. TOBIAS, being duly sworn, deposes and says that:

1. He is an Assistant in the office of Adrian P. Burke, Corporation Counsel of the City of New York, attorney for the City defendants in the above encaptioned matter. This affidavit is submitted in support of defendants' motion, pursuant to Rule 62(c), F.R.C.P. to stay the order of this Court, dated July 11, 1974, which enjoins the defendants from confining the detainees in the Manhattan House of Detention for Men, pending the appeal of all orders of this Court arising from its decision dated January 7, 1974, or in the alternative to amend the order dated July 11, 1974 in such a manner as to permit the defendants to house detainees in said institution until October 30, 1974.

2. In view of the fact that this Court has established August 10th as the date by which the detainees must be removed from MHD, the defendants, charged with custody of such detainees, must obtain an expedited disposition of this motion. Therefore, defendants have moved by order to show cause.

3. As stated in the affidavit of Commissioner Malcolm, the department has, in the past few months, made rapid strides in reducing inmate population. The defendants, desiring not to create overcrowding at other City institutions (several other City institutions are already under attack as being unconstitutionally overcrowded), have made tentative plans to house the large portion of the MHD inmates at the New York City House of Detention for Men (NYCHDM) and Branch Queens House of Detention for Men. However, as stated in the affidavit of Commissioner Malcolm, much work needs to be done before said facilities can receive said inmates. The July 11th order simply does not provide sufficient time to complete this task.

4. Should this Court not grant this application for a stay, the defendants will be required to spend considerable funds simply to keep the empty building in a good state of repair pending the outcome of the appeal.

WHEREFORE it is respectfully requested that this Court, taking into account the hardships implicit in the August 10th deadline, the department's desire not to overcrowd other City institutions, and the improvements and reduced population that have characterized MHD in recent months, stay the order, dated July 11, 1974, pending the outcome of the appeal, or in the alternative, amend such order in such a manner as to permit the defendants to house detainees in said institution until October 30, 1974.

DONALD J. TOBIAS

[Jurat omitted in printing.]

Affidavit of Benjamin J. Malcolm

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

BENJAMIN J. MALCOLM, being duly sworn, deposes and says that:

1. He is Commissioner of the New York City Department of Corrections and a defendant in the above encaptioned matter. Deponent submits this affidavit in support of defendants' motion to stay the order of this Court, dated July 11, 1974, enjoining the defendants from confining detainees in the Manhattan House of Detention for Men, pending the appeal of all orders of this Court arising from its decision dated January 7, 1974, or, in the alternative to amend the order dated July 11, 1974 in such a manner as to permit defendants to house inmates in said institution until October 31, 1974.

2. During the past two years, significant improvements have been made in the Manhattan House of Detention for Men. Said improvements have drastically reduced inmate population, substantially increased the amount of recreational time and space, enriched the quality and quantity of programs available, improved the physical facilities and

surroundings, and have, on the whole, effectuated substantially better living conditions for all detainees at this institution.

3. Of great significance has been the reduction in the inmate population. As of 1970, the Manhattan House of Detention for Men housed approximately 1800 inmates. Since that time, the department has taken steps to ensure that such overcrowding was alleviated. Defendants have decreased the population at a far faster rate than set by plaintiffs' own timetable. The timetable set by the plaintiffs projected a decrease in population to 1155 inmates by February 1, 1973. At that date, the population had already been reduced to 884 inmates. Further reductions were made, in each case ahead of plaintiffs' timetable, and, by July 15, 1974, the population had been reduced to 463 inmates, or 51% of the capacity of the institution, a reduction in population far exceeding the demands made either by the plaintiffs or by this Court.

4. Said decrease in population has markedly improved the living conditions in this institution. Whereas in 1970, the quadrant area (for exercise and recreation) provided approximately 7 to 9.9 square feet of space per inmate, the reduction in population has enabled the institution to provide approximately 28 to 39.6 square feet per inmate, a measure of space, according to Dr. Finzel, sufficient for even the most violent prone person.

5. Similarly, this reduction in population has enabled more inmates to take advantage of the ever-increasing recreational, educational and cultural opportunities available

at MHD. The roof recreational area, which will be available for inmate use by mid September, 1974 will provide increased opportunities for inmates to engage in various forms of exercise and recreation. And, of course, this Court is well aware of activities such as the Adult Basic Education program, and the English as a Second Language and High School Equivalency preparation programs, all designed to offer inmates basic remedial instruction. Additional activities, such as the Music Club, drama workshop, art club, as well as the multitude of community service and volunteer programs, provide the inmate population with opportunities to constructively utilize their time as well as to obtain assistance in solving problems related to their incarceration. In addition, 25-26% of the detainee population is gainfully employed at MHD through the institution's Work Incentive Program. And, of course, this Court is aware of the extensive library facilities available at MHD, including the institutional library, the law library, as well as the mini-libraries on each floor. Said programs, of undisputed value to the inmates, are constantly being expanded while at the same time the inmate population is being reduced. Thus, such inmate programs are now able to reach increasingly wider portions of the detention population.

6. It is also clear that recent improvements in the physical plant have made MHD a more commodious institution. For instance, the entire institution is presently being rewired to provide each cell with fluorescent lighting. Said improvement has the effect of doubling the measured quantity of artificial light provided to individual cells. In addi-

tion, every floor is being equipped with mercury vapor lighting.

7. The department has increased its efforts to provide adequate ventilation and heating at MHD. The housing floor windows, which were welded shut in 1970, have been opened and screened. An expanded maintenance effort has been directed towards clearing the air ducts and servicing the institutional fans. Also, 29 additional heating coils have recently been installed.

8. In addition to the physical improvements and expanded programs taking place at MHD, all directed toward improving inmate life at the institution, significant changes in institutional regulations have been instituted as well. For example, lockout hours have been expanded until 10 p.m. and, as originally requested by the inmates, lights are kept on until midnight. The visiting regulations have also undergone significant change. Prior to February 4, 1974, inmates were allowed two visits of thirty minute duration per week. The visits were restricted to evenings, with children allowed on Wednesdays only. At the present time, inmates are permitted five visits of forty-five minute duration per week. Visits are now scheduled in the afternoon as well as in the evening and children may visit at any time.

9. As the Court is undoubtedly aware, the changes set forth in this affidavit are only examples of and are by no means an exhaustive list of the recent improvements taking place at MHD. However, it is readily apparent that the reduced numbers of inmates who remain at MHD are not

subject to the same conditions that existed at the time of trial, let alone as of the date the lawsuit was instituted.

10. In order to implement the Court order, dated January 11, 1974, this department has had to survey other available facilities. While the department tentatively plans to house a limited number of eligible inmates at the Ossining Correctional Institution, the remainder, and largest number of inmates (who are not under mental observation) would be housed at the New York City House of Detention for Men, located on Rikers Island.

11. In order to house the approximately 200 inmates the department would have to transfer to NYCHDM, the department would have to renovate an entire housing block currently not in use. The housing block is presently undergoing extensive renovation and repair, including window replacement, new installation of lighting fixtures built in the cell areas and outside block area, plumbing repairs, bed replacement and repainting. Of even greater significance, however, is the fact that the NYCHDM, which is presently used as an overdow institution, is without a medical receiving room. Thus, no facilities exist at said institution to medically examine and evaluate inmates who are brought into the custody of this department in the first instance. In addition, the NYCHDM has no area set aside for methadone detoxification. This department has embarked upon a program to make the above improvements, but it is not anticipated that such work could be completed until the end of October, 1974.

12. An additional complication created by the July 11th order stems from the fact that at the present time the MHD contains 70-90 inmates who are under mental observation. Tentative plans call for these inmates, along with the appropriate staff members, to be transferred to Branch Queens House of Detention for Men, the only available facility that has a mental observation area. However, in order to service this increased complement of detainees requiring special treatment, certain structural changes must be made, including the construction of an additional nursing station, the partitioning of additional floor space and the addition of security features.

13. This department is therefore compelled to make this application. At the present time several of the department's institutions are the subject of lawsuits alleging that they are overcrowded. We can only avoid exacerbating the situation at those institutions by opening up the presently inactive cell block at the New York City House of Detention for Men. However, as stated above, in order to properly and adequately service the needs of inmates placed in such a facility, this department requires additional time for renovation, as stated above.

WHEREFORE, it is respectfully requested that this Court stay the order dated July 11, 1974, pending the outcome of the appeal, or in the alternative, amend the order in such a manner as to permit defendants to house detainees in said institution until October 30, 1974.

BENJAMIN J. MALCOLM

[Jurat omitted in printing.]

Affidavit of Stuart Chagrin

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

STUART CHAGRIN, being duly sworn, deposes and says that:

1. He is employed by the Department of Correction as Director of Planning. One of the duties routinely performed by deponent in this capacity is the analysis of relevant statistics.

2. This department has recently completed its statistical analysis of the length of stay of adult detainees in the various boroughs. The statistical said chart is annexed to this affidavit.

3. The figures on the chart show the number of inmates that stayed in the department's custody for a specific number of days. For example, the chart shows that during the year 1973, 350 adult detainees whose cases emanated from Manhattan courts (and who, in most cases were incarcerated at MHD) remained in the Department's custody for 1 day; 400 remained for 2 days; 354 for 3 days, etc.

Affidavit of Stuart Chagrin

4. These figures indicate that the average Manhattan detainee remained in the Department's custody (and in the overwhelming number of cases were detained at MHD) for 51.9 days. Furthermore, such figures indicate than during 1973 71.2% of Manhattan inmates remained at MHD for less than 45 days, 80.4% for less than 75 days, and 87.5% for less than 105 days.

STUART CHAGRIN

[Jurat omitted in printing.]

DEPARTMENT OF CORREC

LENGTH

MALE DETENTION ADULT - JANUARY 1, 1973 TO DECEMBER 3

	1	2	3	4	5	6-7	8-14	15-22	23-30	31-45	4
MANHATTAN	350	400	364	304	381	544	727	526	380	443	3
	5.3	6.3	5.6	5.7	6.1	8.6	11.7	8.3	6.1	7.1	5.
	5.3	11.9	17.5	23.3	29.3	38.0	49.7	58.1	64.1	71.2	76.
BRONX	180	234	237	145	172	227	313	174	130	182	1
	6.1	8.0	8.1	6.2	5.8	7.8	10.5	5.8	4.3	6.1	3.
	6.1	14.2	22.2	28.5	34.3	42.1	52.6	58.3	63.1	69.2	73.
QUEENS	189	195	162	122	103	174	322	157	103	133	
	8.2	8.3	7.1	5.3	4.5	7.6	14.0	6.8	4.5	5.8	4.
	8.2	16.3	23.4	28.7	33.2	40.8	54.9	61.8	66.3	72.1	76.
KINGS	61	436	399	327	285	432	696	386	231	293	2
	10.4	7.4	6.8	5.6	4.8	7.3	11.7	6.5	3.9	5.0	3.
	10.4	17.8	24.6	30.2	35.1	42.4	54.2	60.8	64.7	69.7	73.
RICHMOND	20	25	12	12	10	25	41	17	11	19	
	10.5	13.1	6.3	6.3	5.2	13.1	21.5	8.9	5.8	9.9	5.
	10.5	23.7	30.0	36.4	41.6	54.7	76.4	85.3	91.1	101.0	106.
SUB TOTAL	1357	1285	1164	1012	954	1402	2102	1260	861	1070	7
	7.4	7.0	6.4	5.5	5.2	7.7	11.5	6.9	4.7	5.8	4.
	7.4	14.5	20.9	26.5	31.7	39.4	51.0	57.9	62.7	68.5	72.

STATISTICAL CHART ANNEXED TO AFFIDAVIT OF STUART CHAGRIN

TION CITY OF NEW YORK

PAGE 100

OF STAY

07/23/74

1, 1973

	61	76	91	106	121	136	151	183	213	243	273	360	OVER
	-75	-90	-105	-120	-135	-150	-182	-212	-242	-272	-365	-548	548
1	229	182	151	112	103	71	129	72	89	87	129	92	37
5	3.6	2.8	2.4	1.7	1.6	1.1	2.0	1.1	1.4	0.9	2.0	1.5	0.5
7	80.4	83.3	85.7	87.5	89.1	90.2	92.3	93.4	94.8	95.8	97.8	99.4	100
7	81	77	67	66	55	39	75	55	42	38	100	72	24
5	2.7	2.6	2.2	2.2	1.8	1.3	2.5	1.8	1.4	1.2	3.3	2.4	0.8
2	75.9	78.5	80.8	83.0	84.9	86.2	88.7	90.6	92.0	93.3	96.7	99.1	100
2	90	78	62	45	44	33	51	35	28	12	42	10	9
0	3.9	3.4	2.7	1.9	1.9	1.4	2.2	1.5	1.2	0.5	1.8	0.4	0.3
1	80.1	83.5	86.2	88.1	90.1	91.5	93.7	95.3	96.5	97.0	98.9	99.6	100
2	173	136	116	82	71	60	108	104	81	73	234	255	71
6	2.9	2.2	1.9	1.3	1.2	1.0	1.8	1.7	1.3	1.2	3.9	4.3	1.2
4	78.3	78.5	80.5	81.9	83.1	84.1	86.0	87.8	89.1	90.4	94.4	98.7	100
8	7	2	3	1		1	7	4	4	4	2		
2	2.8	0.8	1.2	0.4		0.4	2.8	1.6	1.6	1.6	0.8		
7	83.6	89.4	90.6	91.0		91.4	94.3	95.9	97.5	99.1	100		
0	980	409	399	300	273	204	370	270	244	184	507	441	672
2	3.1	2.5	2.1	1.6	1.5	1.1	2.0	1.4	1.3	1.0	2.7	2.4	3.6
9	76.1	78.6	80.8	82.5	84.0	85.2	87.2	88.7	90.0	91.0	93.8	96.3	100

Affidavit of Joel Berger in Opposition to Application for Stay in District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

JOEL BERGER, being first duly sworn, deposes and says:

1. This affidavit is submitted in opposition to the City defendants' motion of July 23, 1974, for a stay pending appeal of this Court's order of July 11, 1974, or, in the alternative, for an amendment of that order extending the deadline for closing the Tombs to October 31, 1974.

2. The moving papers of the City defendants contain no new material which should affect this Court's ruling of July 11, 1974. As this Court has recognized on numerous occasions, the reduction in population at the Tombs does not and cannot in and of itself cure the physical defects of the building so as to provide contact visits, meaningful outdoor recreation, soundproofing of concrete walls, a ventilation system that works, and transparent windows for visual contact with the outside world.

3. The only new fact contained in the City's moving papers is the admission that the renovation which has kept

the roof recreation area closed will not be completed until mid-September (It was due for completion last December 31, under the consent decree of August 2, 1973). At the conference in chambers on May 29, 1974, Deputy Commissioner Birnbaum represented to the Court that the roof would be reopened by the end of July and denied Mr. Herman's prediction that the roof would be closed for the entire summer. The total elimination of even this limited, constitutionally inadequate outdoor recreation space during the hottest period of the year only heightens the necessity for swift judicial action. Indeed, should this Court's order be stayed pending appeal, plaintiffs will have no choice other than to request the Court to order alternative forms of outdoor recreation (e.g., bussing to fields on Rikers Island) during August and September as an emergency measure.

4. In its opinion of July 11, 1974, p. 10, this Court made a finding of fact that since its original decision on January 7, 1974, "[w]hile some improvements have been made in the conditions then existed, nevertheless, six months after the filing of our opinion, the bulk of those conditions remain as they were." Defendants have offered nothing to dispute that finding, and it should therefore be adhered to by this Court.

5. Plaintiffs believe that, as a matter of law, defendants are not entitled to a stay pending appeal. See Plaintiffs' Memorandum of Law accompanying this affidavit. We further respectfully submit that the appellate process will move far more swiftly if defendants are required to seek their proposed stay from the Court of Appeals, since that

Court has the power to condition the granting of any such stay upon defendants' adherence to a rigorous expedited appellate schedule.

6. Defendants, in still one more effort to delay the progress of this case, have not yet filed a notice of appeal from this Court's order of July 11, 1974. Since a stay pending appeal can only be granted "[w]hen an appeal is taken . . ." [F.R. Civ. P. 62(c)], it is respectfully requested that defendants' be required to file their notice of appeal at once before the Court rules on the motion.

7. Defendants' proposed alternative relief, an amendment of the Court's order extending the deadline for closing the Tombs to October 31, 1974, would have virtually the same effect as a stay pending appeal. Furthermore, the motion, having been served more than ten days after entry of the Court's order, is untimely. F.R.Civ.P. 59(e). It is respectfully requested that this part of the motion be denied on grounds of untimeliness as well as on the merits, lest defendants seek to extend the time for appealing under F.R.App.P. 4(a) and thus continue to delay the progress of this case.

JOEL BERGER

[Jurat omitted in printing.]

District Court Order
Filed August 2, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES RHEM, ROBERT FREELY, LEO ROBINSON, and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

BENJAMIN MALCOLM, Commissioner of Correction for the City of New York; PETER SCHAEFER, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; and MALCOLM WILSON, Governor, State of New York; OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

The municipal defendants, having brought this application for a stay of the implementation of the order of this Court, dated July 11, 1974, enjoining them from housing detainees in the Manhattan House of Detention for Men after August 10, 1974, and having appeared by their attorney Adrian P. Burke, and the plaintiffs, having appeared by their attorney William E. Hellerstein,

District Court Order

Now, upon reading and filing the Order to Show Cause, and all the supporting papers herein, it is

ORDERED that the municipal defendants' application to stay the implementation of the order of this Court, dated July 11, 1974, pending the disposition of the appeal of this action, is hereby denied, and it is further

ORDERED that upon the filing of a notice of appeal, the implementation of the order of this Court, dated July 11, 1974 is hereby stayed until the municipal defendants' application for a stay, pending disposition of the appeal, is heard by the Second Circuit Court of Appeals.

MORRIS E. LASKER
United States District Judge

Notice of Appeal
Filed August 6, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES RHEM, ROBERT FREELY, LEO ROBINSON and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; ARTHUR RUBIN, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; MALCOLM WILSON, Governor, State of New York; and OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants.

SIRS:

NOTICE is hereby given that Benjamin L. Malcolm, Arthur Rubin, and Abraham D. Beame hereby appeal to the United States Court of Appeals for the Second Circuit from the order of Hon. Morris E. Lasker entered herein on or about July 11, 1974, enjoining defendants Malcolm,

Rubin, and Beame from confining any persons in the Manhattan House of Detention after August 10, 1974.

August 6, 1974

Yours, etc.

ADRIAN P. BURKE
Corporation Counsel of the
City of New York
Attorney for Appellants
Office & P.O. Address:
Municipal Building
New York, N.Y. 10007

By STANLEY BUCHSBAUM
First Assistant Corporation
Counsel

To:

WILLIAM E. HELLERSTEIN, Esq.
The Legal Aid Society
119 Fifth Avenue
New York, N.Y. 10003

HON. LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Defendants
Two World Trade Center
New York, N.Y.

Order of Circuit Court Granting Conditional Stay

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fifteenth day of August, one thousand nine hundred and seventy-four.

Present:

HON. JAMES L. OAKES, *CJ*
HON. MARVIN E. FRANKEL, *DJ*
HON. ROBERT J. KELLEHER, *DJ*

JAMES RHEM, ROBERT FREELY, LEO ROBINSON and EUGENE NIXON, individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellees,

—v.—

BENJAMIN J. MALCOLM, Commissioner of Correction for the City of New York; ARTHUR RUBIN, Warden, Manhattan House of Detention for Men; ABRAHAM D. BEAME, Mayor, City of New York; PETER PREISER, Commissioner of Correction of the State of New York; MALCOLM WILSON, Governor, State of New York; and OWEN MCGIVERN, Presiding Justice, New York State Supreme Court, Appellate Division, First Department, individually and in their official capacities,

Defendants,

BENJAMIN J. MALCOLM, ARTHUR RUBIN, and ABRAHAM D. BEAME,

Defendants-Appellants.

Order of Circuit Court

IT IS HEREBY ORDERED that the motion made herein by counsel for the municipal-appellants dated August 6, 1974 for a stay be and it hereby is granted on condition that appellants will honor requests to transfer to New York City House of Detention for Men at Rikers Island or other available facility, at the discretion of the Commissioner of the Department of Correction, of inmates of the Manhattan House of Detention for Men who has been heretofore or who hereafter will have been detained 40 days or who hereafter are detained for 14 days except the following inmates: inmates currently on trial; inmates held for mental observation, bearing in mind the appellants' representation that within approximately 6 weeks all these inmates will be transferred to the Branch Queens House of Detention for Men; and those determined to be escape risks. This order is subject to any further order of the court and any individual application.

Nothing herein is to be construed as qualifying such power of the appellants as may be provided by law to *remove* inmates of the Manhattan Detention Center to other facilities, or to transfer inmates among these facilities, as they may in the exercise of their discretion deem fit.

IT IS FURTHER ORDERED that the appeal herein shall be set for argument on September 27, 1974; that the appellants shall file a brief and joint appendix on or before September 9, 1974; and that the appellee shall file a brief on or before September 16, 1974.

JAMES L. OAKES
ROBERT J. KELLEHER, *U.S.D.J.*

I dissent to the extent, and for the reasons, stated in open court on the morning of 8-15-74.

MARVIN E. FRANKEL, *U.S.D.J.*

CITY COMMUNICATIONS TO JUDGE LASKER SUBSEQUENT TO MARCH 22, 1974 JUDGMENT

April 15, 1974

Hon. Morris E. Lasker
Justice of the Supreme Court
United States District Court
Foley Square, U. S. Court House
New York,N.Y., 10007

Re: 70 C 3962

Dear Judge Lasker:

Pursuant to order of the court dated August 2, 1973, the following report is hereby submitted concerning implementation of the Court Order.

(1) The provisions contained in Item No. 1 of the order were complied with as of date of entry of the order.

(2) Due to construction delay the new estimated date for completion of the roof enclosure is July, 1974. With respect to removal of one-half of the eighth floor and one-half of the fifth floor for additional programmatic space, plans are presently being reviewed by Public Works prior to submission to the Bureau of the Budget. It should be noted however, that the present Administration is considering whether to carry out a massive renovation of the Manhattan House of Detention for Men or to build a new institution as an alternative. In view of this fact it will not be possible to give a completion date for the proposed renovation.

(3) The Basement Recreation area has been discontinued for use since it was found to be impractical. Although the basement recreation area was utilized for recreation pursuant to the order, the Department found that it could not be used for that purpose due to poor ventilation which resulted in the inmates having a total lack of interest in this recreation area.

(4) Windows - All windows that were welded shut on inmate housing floors have been opened.

(5) Rewiring - At present the entire institution is being rewired and existing lights are being replaced with flourescent fixtures. The fourth floor has been completed and work is in progress on the seventh floor.

(6) Sanitation - Upon information received all items contained in this section have been complied with except that certain items which have been ordered have not as yet been received. There are items in the Sanitation Report that fall into the category of Capital Budget Items. The Department has included these items in the 1974-75 Capital Budget which is currently awaiting approval.

(7) Inmate Laundry - The Department of Correction has included four (4) washers and dryers on all the housing floors, third floor through the tenth floor, in the Capital Budget 1974-75.

(8) Inmate Disciplinary Hearings - The Department has complied with the Court's order with regard to conducting disciplinary hearings.

(9) Inmate Councils - The Department has complied with the Court's order to provide for Inmate Councils with meetings held twice a month.

Additionally, the Court Order contains approximately fifteen items regarding changes to be instituted in the area of health services. At the present time I am awaiting information from Health Services Administration as to their compliance with this portion of the order.

Very truly yours,

RONALD A. ZWEIBEL
Director of Legal Affairs

RAZ:ag
cc: Corr Comm

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

ADRIAN P. BURKE, Corporation Counsel

April 24, 1974

Honorable Morris E. Lasker
United States District Judge
United States Courthouse
Foley Square
New York, New York

Re: Rhem v. Malcolm

Dear Judge Lasker:

This is to confirm my telephone conversation with you on April 22, 1974. It is my understanding that defendants have until Monday, April 29, 1974 to submit the plan directed by your Order, signed March 19, 1974 and entered March 22, 1974.

An extension is requested because the staff of the Department has been occupied with a number of emergency situations, foremost among which was the preparation for hearings before the Board of Correction.

As I indicated to you, I have contacted my adversary, Joel Berger, and he opposes any extension.

Respectfully,

Leonard Bernikow
Assistant Corporation Counsel

CC: Joel Berger, Esq.

April 28, 1974

Hon. Morris E. Lasker
United States District Court
Southern District of New York
United States Court House
New York, N.Y., 10007

Re: Rhem v Malcolm

Dear Judge Lasker:

I am in receipt of your letter dated April 23, 1974 wherein you requested information concerning items that have been requisitioned for the Manhattan House of Detention for Men, and also a list of Capital Budget Items arising out of recommendations made by the Health Department Sanitarian.

The following items have been requested in the 1974-5 Capital Budget:

(1) Complete modernization of the kitchen.

(2) Washer-dryer on all housing floors.

The following non-capital budget items have been requisitioned by the Department:

(1) Ceramic wall tiles for use throughout the institution.

(2) New dishwashing machines for kitchen on order.

(3) Floor tiles missing, 12th floor Infirmary, library, and lavatory on the 12th floor.

(4) Plumbing access panels missing in pantries.

(5) Third Floor East Dormitory, two urinals to be replaced.

(6) Slop sink and Officer's lavatory wash basin on sixth floor not providing water.

I am also enclosing a copy of a letter sent to me by Daniel Armet the new Executive Director for Prison Health Services. This letter outlines the Health Service Administration's progress to date in complying with the consent degree.

Very truly yours,

RONALD A. STEIBEL
Director of Legal Affairs

RAZ:ag
cc: Corr Comm
L. Bernikow

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

ADRIAN P. BURKE, Corporation Counsel

April 29, 1974

Honorable Morris E. Lasker
United States District Judge
United States Courthouse
Foley Square
New York, New York

Re: Rhem v. Malcolm
70 Civ 3962

Dear Judge Lasker:

Submitted herewith is the response of the defendants to your order of March 19, 1974.

In submitting said response, the defendants do not acknowledge liability nor adopt the submission as the appropriate solution to the controversy herein.

The response is submitted solely to comply with the Court's directive. (Taylor v. Board of Education, 288 S. 2d 600 (2d Cir. 1961).

Respectfully yours,

Leonard Bernikow
Assistant Corporation Counsel

CC: Joel Berger, Esq.

THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION
100 CENTRE STREET
NEW YORK, N.Y. 10013
TEL. 566-8318

BENJAMIN J. MALCOLM
Commissioner

Ronald A. Zweibel
Director of Legal Affairs

April 29, 1974

Leonard Bernikow, Esq.
Corporation Counsel
Municipal Building
New York, N.Y., 10007

Re: Rehm v Malcolm

Dear Mr. Bernikow:

This is submitted pursuant to the Order of Judge Morris E. Lasker entered March 22, 1974.

The defendants are exploring the possibility of closing the Manhattan House of Detention for Men. If this is done the present inmates will be transferred to other institutions.

The defendants are considering the feasibility of making structural changes to comply with the January 7, 1974 opinion of the court or of demolishing the institution and rebuilding. The final decision will depend on cost and time factors.

As the Court is aware the Department is presently expending one million dollars at the Manhattan House of Detention for Men. Three hundred seventy-five thousand dollars for the roof and sevn hundred thousand dollars for wiring to provide greater illumination and to up date the electrical capacity to 1974 standards.

The following programs are going forward:

(A) Classification

Experimental classification system is presently being structured through the joint efforts of New York University and the Department of Correction.

Status of Progress

(a) Preliminary training for staff of the Queens House of Detention for Men was completed in March, 1974.

(b) Areas of the Queens House of Detention for Men have been designated for operation of the Classification Program.

(c) Office equipment necessary for the program and indicated below is on order.

Operational Plan

(a) There will be additional on-site training scheduled for May, 1974 at the Queens House of Detention for Men.

(b) Classification program will be implemented in the Queens House of Detention for Men on a pilot basis for four (4) months, May to October, 1974.

Manhattan House of Detention for Men

(a) Training for the Manhattan House of Detention for Men personnel is projected for August through September, 1974.

(b) Tentative implementation is scheduled for October of 1974 at the Manhattan House of Detention for Men

(c) The ninth floor has been selected as the site for the forty-eight hour classification process.

(d) A back-up site has been selected on the seventh floor dependent on the lighting contractor's progress.

(e) The Department is presently in the process of requisitioning supplies and equipment for the program.

(f) The Department will need to hire additional personnel to carry out the Classification project.

(g) Renovation will be necessary to operate the program.

Personnel Requirements

Based on the projection of one hour per inmate interview plus clerical follow-up and additional observation personnel requirements on a seven day basis are:

(a) Ten (10) Correction Officers.

(b) Two (2) Correction Counsellors.

(c) One (1) Clerical Typist.

(d) The equipment to be acquired are:

(a) Eight (8) desks.

(b) One (1) typing chair.

(c) Thirty (30) chairs

(d) One (1) typewriter.

(e) Two (2) file cabinets.

Conclusion

Implementation of the Classification System can only be done at the Manhattan House of Detention for Men with the additional staff and material available. A rough budget estimate of costs is as follows:

Personnel	$176,600.00
Other Than Personnel Services	$ 2,000.00
Total	$178,600.00

(B) Visits

Number of visits, hours and frequency.

As of February 4, 1974, visiting procedures at the Manhattan House of Detention for Men have been altered as follows:

Past Procedures

(a) Two visits per inmate per week, thirty minutes per visit.

(b) Visitors List must be approved.

(c) One visit time in the evening.

(d) One children visit on Wednesday only.

Present Procedures

(a) Five inmate visits per week.

(b) Forty-five minutes per visit.

(c) No approved Visitors List.

(d) Two visiting times, afternoon and evening.

(e) Children to visit any time.

Number of visits

The Department's position is that it is impractical to increase the number of visitors because of space

limitations, ventilation problems, and noise problems. Prior to such increase in the number of visitors the Department should conduct a study with experts in noise abatement, engineers for ventilation and conduct a study of traffic flow.

Optional Lockout

The Department can begin a program of Optional Lockout with the availability of additional Correction Officers for addtional observation needs for such a program.

The Department would require three (3) additional Correction Officers at a budget estimate of $38,000.00

Officer Quota

Current assignment for the Manhattan House of Detention for Men indicates two hundred and fifty-nine (259). The present post structure calls for two hundred and ninety-six (296).

The present gap of thirty-seven Officers includes the number of Officers required for the Classification Program and Optional Lockout.

Very truly yours,

RONALD A. ZWEIBEL
Director of Legal Affairs

RAZ:ag

May 2, 1974

Honorable Morris E. Lasker
United States District Judge
United States Courthouse
Foley Square
New York, New York

Re: Rhem v. Malcolm
70 Civ. 3962

Dear Judge Lasker:

This letter is submitted, pursuant to your request, to indicate the Department of Correction's reasons for opposing the use of the present counsel room for purposes of contact visits in the Manhattan House of Detention for Men.

The Department of Correction has no objection to the concept of contact visits in the Manhattan House of Detention. However, in order to carry out such a program extensive renovation and redesign of the facility would be necessary. The present counsel room and its surrounding area is not adequate in terms of space and security necessary for contact visits. In addition, the institution, at present, does not have the sufficient classification instruments and procedures to implement this program.

The security problem is the first consideration of the Department. As you are aware, the counsel room is very close to the front gate of the institution. The counsel room is accessible only through the front gate of the institution for visitors. This gate is the main entrance to the institution and contains the centralized communications network, the arsenal and the general office. There is no way to screen visitors other than in the area between the front door and the middle gate. This means that any person carrying a weapon, upon entry through the front door, gains access to the vital main entrance area.

The officer at the middle gate, the second gate after the front door, must, of necessity, carry the keys to the middle gate, which leads into the middle area (ante room), counsel room and the inside gate leading to the institution proper.

This officer, therefore, is very vulnerable from a security point of view. It should be carefully noted that any escape attempt from the counsel room area does not require the smuggling of weapons into the institution as physical force of one or more individuals would be sufficient. It would not require the ingenuity, organization, planning or equipment used in the attempt made in the visiting room of the Manhattan House of Detention several days ago. Any escape attempt in the counsel room area would expose large numbers of personnel to physical danger and also open the possibility of the entire institution being taken.

The present general visiting facility is supplied with a separate entrance and is sealed from the remainder of the institution. The counsel room, on the other hand, is in the heart of the institution.

The plaintiffs suggest that the counsel room be used when it is not heavily utilized for its usual activities. However, at that time the receiving room, which is somewhat adjacent to the counsel room, is being used to process returning court cases as well as new admissions. In addition, because of this, the receiving room could not be used to search visitors.

In conclusion, the Department strongly urges that they be allowed to develop a system of contact visits which would be beneficial to the inmates, visitors and staff.

Respectfully yours,

Leonard Bernikow
Assistant Corporation Counsel

CC: Joel Berger, Esq.

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

ADRIAN P. BURKE, *Corporation Counsel*

BY HAND

May 21, 1974

Honorable Morris E. Lasker
United States District Judge
United States Court House
Foley Square
New York, New York 10007

Re: Rhem v. Malcolm
70 Civ. 3952

Dear Judge Lasker:

This letter is submitted pursuant to your instructions given in Chambers on May 14, 1974. As I recall your Honor inquired about double occupancy, the basement recreation area, rewiring and the future of the Manhattan House of Detention.

With regard to your first area of inquiry, there were as of May 10, 1974, 98 inmates in double occupancy. Of this number, 72 inmates were on the ninth floor (methadone detoxification floor) and 26 inmates on the tenth floor (mental observation floor). The ninth floor detoxification program lasts an average of seven days and is, therefore, a transient situation which affords better observation for some individual cases. The tenth floor inmates who are in double occupancy are the more severe suicide risks. Some of these inmates are later transferred to Branch Queens, Rikers Island Hospital or Bellevue Hospital if their condition warrants. Others progress from a Number 1 rating (most severe) through Number 5 (ready for general population) and are transferred to general population. The average stay of inmates on the mental observation floor is eleven days.

The cost of air conditioning the basement recreation area would be $10,000, and approximately 25 inmates could use this area at one time. At present, the inmates refuse to use this recreation area because it is too hot and too confining.

As far as rewiring is concerned, the completion date on the electrical contract is March, 1975. It takes about six weeks per floor and an additional two weeks for housecleaning, painting, etc. The rewiring on third, fourth and seventh floors have been completed.

Commissioner Malcolm has authorized me to state that City Hall has informed him that on June 15, 1974 the City will make a determination as to the future of the Manhattan House of Detention and, if it is to be vacated, when that will occur.

Respectfully yours,

Leonard Bernikow
Assistant Corporation Counsel

cc: Joel Berger, Esq.

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING, NEW YORK, N. Y. 10007

NORMAN REDLICH, Corporation Counsel

June 10, 1974

Hon. Morris E. Lasker
United States District Court
Southern District of New York
Foley Square Courthouse
New York, New York 10007

Re: Rhem v. Malcolm

Dear Judge Lasker:

Pursuant to your directions of May 29, 1974, I am enclosing herewith a copy of so-called "Shopping List" which the Department of Correction transmitted to the Bureau of the Budget in March of this year. Also enclosed is the "Cost Study of Improvements to Manhattan House of Detention for Men prepared by the Department of Public Works.

As I recall, you directed that I indicate to you the plans or programs of the Department of Correction. You also indicated that I submit the aforesaid material. In attempting to prepare my response it became apparent to me that the submission of the material would best comply with your direction. If it does not, please let me know and I will attempt to respond further.

I can add, however, that with regard to the renovation of the fifth and eighth floors, the Department of Public Works has received authorization from the Bureau of the Budget to prepare preliminary drawings for this plan. At this time, no final plans are available. The current capital budget has an appropriation of $1,175,000 for the renovation of the fifth and eighth floors.

As far as contact visits are concerned, the Bureau of the Budget and Department of Correction have conducted a survey, prepared a preliminary report to the Department of Public Works and a cost estimate has been prepared by the Department of Public Works on April 16, 1974. The Bureau of the Budget has not rendered a final decision on funding in this area.

The Department of Public Works has submitted a cost estimate concerning noise abatement, ventilation, transparent windows and laundry facilities. At this time, the Bureau of the Budget has not made funding provisions.

You also directed that I distinguish items which are part of the consent decree and that which are part of your opinion.

The reference in the "Shopping List" to contact visits, sound system. noise reduction programs, heating and ventilation would come under the court's opinion. The references to the renovation of the fifth and eighth floors, inmate personal laundry system and development of additional recreation program space would come under the consent decree. There are other items in the "Shopping List" which do not come under either the court's opinion or the consent decree.

Respectfully yours,

Leonard Bernikow
Assistant Corporation Counsel

Enclosures

CC: Joel Berger, Esq.

THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION
100 CENTRE STREET
NEW YORK, N.Y. 10013

JOHN J. MALCOLM
Commissioner

Telephone: 374-4414
In reply, refer to
D&E #308-4

March 15, 1974

Honorable Melvin Lechner
Director
Bureau of the Budget
1200 Municipal Building
New York, NY 10007

ATTENTION Mr. Anthony Japha

Dear Director Lechner:

Re: C-79, Renovations
Manhattan House of Detention

As requested at our meeting of March 4, 1974, we are submitting herewith our "Shopping List" for all of the items, we believe, when completed and accomplished would make the Manhattan House of Detention for Men a satisfactory institution with respect to all concerned.

The only item not listed on this program dated March 14, is the air conditioning which should be provided for all of the first floor and half of the second floor which will include the visiting house and dining rooms and the 11th and 12th floor program areas.

We have worked very close with your staff in order to prepare the necessary information required for the Department of Public Works to set a cost limitation to each of these projects. The programs are listed reflecting our priorities.

Sincerely yours,

BENJAMIN J. MALCOLM
Commissioner

JMB/fl
Enclosure
cc Mr. Waymon Roberson
Bureau of the Budget

March 14, 1974

RENOVATION OF VISITING FACILITIES FOR CONTACT VISITS

Under this program, the inmates will have direct physical contact with his visitors rather than speaking to his visitors over a telephone while being physically separated by a wall with a pane of glass in it.

This program will provide for the renovation of approximately 5,000 square feet of the west wing on the second floor. The essential features of construction involve the removal of 68 existing visiting booths, the elimination of the inmates' mess hall, relocation of the superior officers' dining room adjacent to the staff dining room. The remaining space will be renovated for contact visits including electro-magnetic search devices, lockers to secure visitors' possessions that violate security regulations, new lighting if required, new flooring, acoustical treatment of ceiling and walls. Visiting booths for up to seventeen inmates shall be constructed.

In addition, the visitors' waiting room on the first floor, which feeds the visiting area on the second floor, encompassing an area of approximately 1,125 square feet, shall be renovated. Renovations shall include new flooring, painting, acoustical ceiling, etc.

RENOVATION OF THE 5TH AND 8TH FLOORS

Active recreation will be provided by removing the cells from the west wing of the fifth and eighth floors. In each area, a gymnasium will be constructed for active recreation. In addition, each area will contain class rooms, medical and professional rooms, etc. This will provide approximately 6,000 square feet of additional program area.

INMATE PERSONAL LAUNDRY SYSTEM

Under this program, up to four commercial quality washers and dryers will be installed on each inmate housing area on the third through the tenth floors. This program is intended to permit inmates to properly wash and dry their clothes. At the present time, the inmates hand wash and dry their clothes in their cells. Provisions shall be made to eliminate the heat from the dryers.

NEW FLOORING

Under this program, all bare concrete floors in the inmate areas will be covered with vinyl asbestos tile. This is intended to improve the aesthetics of the inmate areas and provide increased noise abatement. Approximately 55,000 square feet of floor area will be covered.

MUSIC SYSTEMS

Under this program, a low level sound system will be provided in all inmate areas, to provide music for the recreational needs of the inmates. Low level speakers will also be installed in each cell. Some program selection may be provided in each cell, if feasible.

DEVELOPMENT OF ADDITIONAL RECREATION AND PROGRAM SPACE

Under this program, additional space for both passive and active recreation will be provided to meet the needs of the inmates.

Passive recreation will be provided by the construction of day rooms in the E and F Section of all housing floors from the third floor through the eighth floor excluding the west wing of the fifth and eighth floors. Each of Sections E and F will be renovated to provide for the construction of two enclosed day rooms in each section on the indicated floors. All cells will be removed from these sections, and where a guard walk exists, a new concrete floor shall be constructed at the level of the guards' walk to create an area of approximately 1,000 square feet. A new vinyl asbestos tile flooring will be provided and acoustical ceilings will be provided in all day rooms. A total of approximately 20 day rooms of approximately 400 square feet net will be provided. A security station will be provided in each section to supervise two day rooms.

NOISE REDUCTION PROGRAM - CEILING

Under this program, the ceilings of the dormitory on the third floor, and the lockout area on all housing floors on the fourth through the tenth floors and the library on the eleventh floor. The acoustical ceiling shall have a noise reduction factor exceeding .5. Approximately 24,000 square feet of acoustical ceiling is required.

NOISE REDUCTION PROGRAM - WALLS

The walls (excluding cells) shall receive acoustical treatment in the aforementioned areas. The noise reduction shall exceed .5. Approximately 6,000 square feet of wall surface will receive acoustical treatment.

MAIN FLOOR MODERNIZATION

Under this program, the main floor will be modernized, the administrative areas expanded and a new control room constructed. This work is intended to increase the efficiency of the administrative aspects of the institutions.

The essential features of this modernization is the construction of offices for the warden and assistant deputy wardens and staff in

[illegible] portion of the existing [illegible] in the receiving room, construction of a new control room in the eastern half of the existing lobby and waiting room, a new female [illegible] in a portion of the existing warden's office and reducing the size of the public waiting room (not the visitors' waiting room) by approximately 1'0 square feet, etc. New flooring, partitions, acoustical ceiling and painting will be required. The main floor encompassing an area of approximately 11,000 square feet is required to be renovated.

HEATING AND VENTILATING SYSTEM

Under this program, the heating and ventilation system will be upgraded to provide for proper ventilation and satisfactory control of temperatures on each floor, in order to provide for the comfort of the inmates and staff.

The capacity of the ventilation system shall be increased to present standards, by installing larger motors, new pulleys, new fans and dampers. The filter system shall be enlarged and improved to provide for the proper filtration of the fresh air supply. The steam heating coils in the ducts of the ventilation system shall be repaired or replaced as required. The ventilation ducts shall be cleaned as required.

The perimeter radiator heating system will be provided with a new thermostat control system to provide for the proper control of temperatures on each floor. The thermostats receive a security shield to prevent vandalism. The radiator steam traps shall be replaced.

PLUMBING RENOVATION

Under this program, the plumbing system will be upgraded. This will include the installation of new shower stalls on the housing floors, new flushometers on all water closets, replacement of water closets as required, installation of approximately fifty stainless steel water closets in cells on various housing floors for administrative segregation, new piping, new toilets for new superior officers locker room in the basement, etc.

LOCKING DEVICES

Under this program, the manual locking devices (the mechanism which slides the cell doors open and closed) will be changed to automatic operation.

A study contract has already been approved and is underway in connection with the locking devices. Although this work is provided under a separate capital project, it is appropriate to list the estimate of cost in this study as it represents a substantial capital investment.

[illegible]

Under this program, an inmate classification system will be instituted in order to properly implement the minimum, medium and maximum security programs, such as contact visits, participation in various recreational programs, etc.

The tenth floor will be established as the observation, classification and orientation floor. All cells in Section F will be removed and the area renovated to create offices for approximately four psychiatrist offices. The space will provide approximately 800 square feet. The renovation will include the construction of a new concrete floor raised to the level of the guards' walk, new vinyl asbestos tile flooring, partitions and acoustical ceiling, etc.

In addition, the existing inmate recreation room in the basement, an area of approximately 800 square feet, shall be renovated to create offices for psychiatrist for pre-screening in connection with the classification program. Waiting areas will also be provided. New lighting, floors, partitions, acoustical ceiling and ventilation system is required.

KITCHEN MODERNIZATION

Under this program, the kitchen will be completely modernized, in order to provide for the proper operation of the kitchen and the proper preparation of food for the inmates and staff..

The kitchen, encompassing an area of approximately 3,776 square feet, will receive new flooring, new cooking equipment, painting, new layout and possibly revised ventilation.

In addition, the staff dining room and the superior officers, encompassing a total area of approximately 1,700 square feet, will be renovated. This will include new flooring, new acoustical ceiling painting, etc..

ELEVATOR MODERNIZATION

Under this program, the existing six elevators will be modernized to provide reliable high speed service for the transportation of inmates' and staff.

The essential features of this modernization include the installation of five new cabs with push button controls for manual operation, upgrading or replacement of running gear as required including electric motors, cables, brakes, tapes, etc.

PAINTING

Under this program, all inmate areas shall be painted appropriate colors. This program is intended to improve the aesthetics of the inmate areas.

[illegible]

Furnishings and equipment for the remodeled areas, including the new day rooms, professional areas, administrative areas, etc. will be provided.

ADDITIONAL WORK RESULTING FROM SUBSEQUENT DETAILED SURVEY

Prior to beginning detailed planning for all of the work included in the scope of this study, a detailed comprehensive study will be required. Experience indicates that the detailed survey will indicate the need for additional work that was not reflected in the preliminary survey. The possible magnitude of this additional work should be reflected in this study.

MISCELLANEOUS RENOVATIONS

Under this program, additional renovations including the construction of new locker rooms for the superior officers (approximately 40) in a portion of the existing laundry in the basement, renovation of approximately 1,000 square feet adjacent to the library on the eleventh floor for the correction aid program and departmental hearings providing a file storage room in the basement, etc.

The City of New York

DEPARTMENT OF PUBLIC WORKS
MUNICIPAL BUILDING, NEW YORK, N. Y. 10007

HERBERT J. SIMINS, *Commissioner*

April 16, 1974

MEMORANDUM

TO: ANTHONY JAPHA, Assistant Director of the Budget

FROM: EDWIN BRUNJES, R.A., Director, Bureau of Building Design

SUBJECT: Cost Study of Improvements to Manhattan House of Detention for Men

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Transmitted herewith is the Department of Public Works memorandum dated April 15, 1974 containing the outline cost data for the referenced project as requested by you during the April 12, 1974 meeting at your office.

By copy of this memo I am transmitting this information to Commissioner Malcolm, Messrs Dicksteain and Bucholz of the Department of Correction and to Mr. Roberson of your staff.

I am pleased to have been of assistance to you.

EDWIN BRUNJES, R.A.
Director
Bureau of Building Design

Encl.

JPG:cc

Cost Study of Improvements to Manhattan House of Detention for Men

	Total Cost	
	Empty Structure	Occupied Structure 30% Added
1. Air Conditioning Entire building, including electrical control, etc., costs (This does not include Air Conditioning central Guards Station)	$ 5,870,000	$ 7,631,000
2. Development of Additional Recreation and Program Space (Dayroom in "E" and "F" wings) Passive Contr. #1 - 553,224 Contr. #2 - 250,000 Contr. #3 - 100,000 Contr. #4 - 40,000 943,224 (5th & 8th Floor Active Recreation not included estimated cost $700,000)	943,224	1,226,191
3. Renovation of Visiting Facilities for Contact Visits Contr. #1 - 172,280 Contr. #2 - 35,000 Contr. #3 - 50,000 Contr. #4 - 36,000 293,280	293,280	381,264
3A. Provide two (2) pantries on 3rd Floor Dormitory Areas due to the elimination of inmate dining now on the 2nd Floor.	40,000	52,000
3B. New Dining Facilities on the second floor (Officers and superior officers Dining) result of this alteration is due to Modernization of Visiting Facility Contr. #1 - 38,000 Contr. #2 - 110,000	#1 38,000 #2 110,000	49,000 143,000

4. Inmate Classification Program (not included in program)		
5. Inmate Personal Laundry System Contr. #1 & #3 - 140,000 Contr. #2 - 120,000 Contr. #4 - 100,000 360,000	360,000	468,000
6. Sound System speakers in each cell with individual volume control, speakers in all other inmate areas. Main sound counsole in control room	350,000	455,000
6A. Master Antenna T.V. system for T.V. in dayrooms Amplifiers and low level speakers for T.V. 8 per floor, 5 floors (lock out areas)	6,000	7,800
7. Heating and Ventilation System Cont. #3 - 260,000 (This assumes no change in existing ducts) Cont. #4 - 15,000 275,000	275,000	357,500
8. Kitchen Modernization Cont. #1 - 60,000 Cont. #2 - 200,000 Cont. #3 - 150,000 Cont. #4 - 10,500 420,500	420,000	546,650
9. Elevator Modernization Complete modernization of 6 elevators including new cabs, controls, motors, cables, brakes, etc.	450,000	585,000
10. Plumbing Renovation	210,000	273,000

11. Main Floor Modernization Proposed changes to Administration Area. Contract #1 - 105,172 #2 - 25,000 Air Cond. #3 - 120,000 #4 - 50,000 300,172	300,172	390,223
12. Miscellaneous Renovations Contract #1 - 100,000 New lighting & receptacles #4 - 2,500	102,500	133,250
13. Noise Reduction A.C.T. - 147,000 Carpet (walls) - 56,250 203,250 258,230 w/ 5% contingency 10% overhead 10% profit	258,230	335,699
14. Furnishings and Equipment (as per Budget Estimate)	200,000	
15. Painting Detention Cell Areas 63,400 79,250 w/ 5% contingency 10% overhead 10% profit	79,250	103,025
16. New Flooring Detention Cell Areas	75,000	97,500
17. Locking Devices Consultant Study		
18. Additional Work Resulting from subsequent Detail Survey (not included in this report)		
19. Replacement of Glass Block	2,360,000	3,068,000

19A. Replacement of Glass Block with new detention windows similar to type installed on C-85.		
Removal - 628,900	4,286,400	5,572,320
New Windows - 3,128,125		
Detention Screens - 529,375		
Affect on the existing heating system	100,000	

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

ADRIAN P. BURKE, Corporation Counsel

June 24, 1974

Hon. Morris E. Lasker
Judge, United States District Court
Southern District of New York
United States Court House
New York, New York 10007

Re: Rhem v. Malcolm
70 Civ 3962

Dear Judge Lasker:

This letter is submitted pursuant to your oral directions in Chambers on June 19, 1974 and your letter to "All Counsel," dated June 20, 1974, regarding the status of the City defendant's compliance with the Court's judgment filed March 21, 1974.

A. Ordering paragraphs numbered 1 through 5

Paragraphs 1, 2, 3 and 5 has been fully complied with. See Institutional Order Nos. 17, 20 and 21 enclosed.

With regard to Ordering paragraph No. 4, which deals with disciplinary procedures, the directions contained therein have not as yet been implemented. The notice form required by paragraph 1 of Schedule A will be prepared by June 28, 1974. This delay was due to the fact that the Department had to work up an overall approach for each institution so that the disciplinary system would be implemented in all of their detention institutions. This was an administrative task of extreme difficulty.

We will implement the disciplinary procedures outlined in Schedule A in the Manhattan House of Detention not later than July 22, 1974. The Department found it necessary to provide attorneys on behalf of complainants in those instances in which an inmate is represented by an attorney.

B. The provisions of the judgment ordering the submission of a comprehensive and detailed plan.

i) optional lock-in

The implementation of an optional lock-in procedure requires 13 additional correction officers for the purposes of observation and patrol. There is no budget allocation for these officers nor is there a list currently available from which these officers can be appointed even if the allocation were provided. We are informed by the Department of Personnel that a list of Correction Officer eligibles will be established in September of this year.

ii) contact visiting, visiting hours, visiting numbers and visiting days

Contact visiting requires extensive renovation of present visiting facilities. See iii below for further details. We have previously submitted the department's increased visiting schedules.

iii) noise, ventilation, heat and windows

As in the case of contact visits, the requirements of this part of the judgment requires extensive renovation. While the City would like to go forward with this renovation and has already prepared tentative proposals for such work, and other work as well, which we submitted as attachments to our previous letter, the cost estimate for the entire proposed project is between seventeen and twenty-five million dollars, which is far in excess of what is available under the City's present budget availability. As a result, we cannot provide a time-table as to when this work will commence.

iv) recreation and work opportunities

The roof area is scheduled to be completed on July 30, 1974. The fifth and eighth floor renovation plans have been submitted to the Department of Public Works for detailed drawings and specifications. There have been moneys allocated in the present capital budget for the renovation of the fifth and eighth floors.

v) correction officer staff

A new post survey completed on March 15, 1974, calls for 272 correction officers at the Manhattan House of Detention. As of May 28, 1974, there were 259 correction officers assigned to this institution. A budget request has been made for the additional number. As mentioned previously, there is no list in existence from which appointments can be made nor has there been any action on our budget request.

vi) classification system

The work done for the development of a classification system has been completed. Because of the legal problems which have arisen over the constitutionality of questions in the classification questionnaire the program is not in operation. We foresee difficulty in meeting the October 1, 1974 deadline for the pilot implementation at the Queens House of Detention. The Department is exploring other alternatives to a classification system which should be implemented on a pilot basis prior to the end of 1974 at the Queens House of Detention. The Department is examining two systems presently in use. One at the Adolescent Reception and Detention Center and the other at the New York City Correctional Institution for Women.

Respectfully yours,

LEONARD BERNIKOW
Assistant Corporation Counsel

CC: Joel Berger, Esq.

Enclosures

MANHATTAN HOUSE OF DETENTION FOR MEN
125 White Street, New York, N.Y. 10013

3 April, 1974

INSTITUTIONAL ORDER NO. 17

OFFICIAL MAIL FOR INMATES.

DELIVERY OF.

1. Effective immediately, the following procedures shall be instituted regarding the delivery of official mail to the detainees of this institution.

2. Envelopes bearing letterheads from any Court, Attorney, or Public Official shall not be opened by the Mail Officer upon its receipt. The Mail Officer shall deliver the unopened mail to the intended inmate, open the envelope in the presence of the inmate, inspect the contents, and give the mail to the inmate. Should the envelope contain contents that require special attention (money order, etc.) normal institutional procedures shall be followed and receipts issued. Should the envelope contain contraband or inflammatory literature the Office of the Deputy Warden shall immediately be notified.

3. The receiving inmate shall be required to sign his name in the Registered-Certified Mail Log Book indicating that his mail was delivered and received by him.

4. All mail, other than Official Mail, shall continue to be delivered in compliance with standard procedures.

ARTHUR RUBIN
WARDEN

MANHATTAN HOUSE OF DETENTION FOR MEN
125 White Street, New York, N.Y. 10013

9 April, 1974

INSTITUTIONAL ORDER NO. 20

RECEIPT OF BOOKS/PUBLICATIONS FOR INMATES FROM OTHER SOURCES THAN "DIRECT FROM PUBLISHER."

1. Procedures shall be effected for the acceptance of books, periodicals and publications from persons other than Publishers for delivery to inmates of this institution on Tuesdays and Thursdays between the hours of 9AM and 3PM at the information window in the Office of the Cashier. The amount of reading material accepted on any designated day shall be limited to two (2) books or periodicals or a combination of each, but shall not exceed two (2) in any case. Any of the reading material that appears to violate the dictates of Directive 12, dated 30 March, 1972 ("Screening Committee to Review Literature for Inmates") will be submitted to the Screening Committee for review.

2. When material is presented at the Cashier's Window, the employee assigned to the Mail Room post shall institute MHD Form number 69 (Record of Books/Reading Material Received Other Than From Publisher) in the following manner:

a) The person proffering said material shall be required to present identification consisting of

1. Drivers License and number
2. Welfare Card with photograph
3. Approved I.D. card regarding employment

or other means of identification to properly identify themselves.

3. The person submitting the material shall complete and sign the section of Form 69 pertaining to him/her and present the form along with the reading material to the Mail Room employee. The employee shall thoroughly inspect the material for contraband, complete the portion of Form 69 pertaining to him and deliver the material to the inmate concerned as soon as practicable.

4. Upon delivery, the inmate shall sign the receipt portion of Form 69 in the presence of the delivering employee. The completed form shall then be filed in a special folder in the Cashier's Office for a thirty (30) day period and at the end of the thirty day period the accumulated forms shall be filed in the inmates' respective record folders.

MATERIAL RECEIVED BY MAIL

All reading material received by mail for inmates shall be opened and inspected thoroughly by the Mail Officer for contraband. Packages containing more than two (2) books or publications shall not be accepted, but will either be returned to the sender or placed in the inmate's property. However, if the reading material received meets the criteria needed for delivery, the inmate may select two of the books with the remaining material placed in his property for delivery to him when released from custody. Whatever course of action taken by the institution shall be made known to the inmate.

Packages received by mail which do not have Form 69 properly filled out enclosed with the material shall not be delivered to the inmate until the form is properly executed by the sender. The receiving inmate shall be advised and told to provide the sender with the necessary form so that it may be filled out and forwarded to the institution so that delivery of the material can be made.

When material is delivered to the inmate, he shall indicate its receipt by affixing his signature in the space allotted in Form number 69.

ARTHUR RUBIN
WARDEN

MHD Form 69

MANHATTAN HOUSE OF DETENTION FOR MEN

RECORD OF BOOKS/READING MATERIAL
RECEIVED OTHER THAN FROM PUBLISHER

1. _____
(Title of Material)

2. _____
(Title of Material)

I certify that the above listed material (personally delivered - mailed) to the Manhattan House of Detention for Men for inmate _____ cell _____, by me contains no enclosures or contraband and contains only reading material. I fully realize that the introduction of contraband into a penal institution is a criminal offense.

_____
(signature)

_____
(address)

_____
(relation to inmate)

NOTE: Maximum of 2 pieces of material allowed at one time.
IF MAILING, PLACE RETURN ADDRESS ON PACKAGE AND ENCLOSE THIS FORM.

MATERIAL THAT IS INFLAMMATORY, VIOLATES UNITED STATES POSTAL REGULATIONS, OR REPRESENTS A DANGER TO THE GOOD ORDER, DISCIPLINE AND SECURITY OF THE INSTITUTION WILL NOT BE ACCEPTED.

- -

(FOR OFFICE USE ONLY)

Material Received By Mail ☐ Hand Delivered ☐

If hand delivered, indicate type of I.D. _____

_____

_____
(employee inspecting material)

- -

Date _____

I certify that I have received the above listed material.

_____
(inmate)

(see other side)

INSTRUCTIONS FOR INMATES

If you desire to have books, publications, or other reading material delivered or mailed to you from other than the Publisher, please place your name and cell number on the face of this form and mail it to the person who is going to mail or deliver the material to you.

The person delivering or mailing the material will complete the form and present it at the institution together with the books. If the material is sent by mail the person mailing the material shall complete this form, sign it and include the form in the package when it is mailed. All packages of books will have the sender's return address on the outside of the package.

In the event a package of material is received by mail without the filled out form enclosed, you will be notified and be required to contact the person and have a completed form mailed to the Warden. Delivery to you will not be made until the completed form is received.

Cooperation from all inmates is needed to ensure the success of this program, and to refrain from having an over accumulation of reading material in cells which constitutes a fire hazard as well as a health hazard.

MANHATTAN HOUSE OF DETENTION FOR MEN
125 White Street, New York, N.Y. 10013

April, 1974

INSTITUTIONAL ORDER NO. 6

PUNITIVE SEGREGATION GUIDELINES

1. All inmates in Punitive Segregation status in this institution shall be afforded the normal daily hygienic facilities received by inmates in regular housing areas. They will be permitted showers, shaves, change of linen, soap, toilet tissue, and all other items necessary for the maintenance of personal hygiene.

2. In order to facilitate this procedure, inmates housed in Punitive Segregation shall be escorted individually on a one at a time basis alternate to the lock-out period of other inmates in the quadrant.

3. In cases where any of these items present a danger to the welfare of other inmates, or to the institution, Tour Commanders will establish written guidelines in that particular case, and report of action taken submitted to the Office of the Deputy Warden.

4. Punitive Segregation cells must be in good repair with all standard fixtures.

5. There shall be no restrictions on the right of punitive segregation inmates for written or telephonic communication with counsel or counsel visits. There shall be no restrictions of visits with family or friends in accordance with Institutional Order number 6 of 1974. In addition, there shall be no restriction on sending or receiving mail.

6. Counsel Visits shall be conducted according to standard institutional procedures, and upon request, inmates in punitive segregation will be allowed visitation from clergymen of their faith.

7. This order contains amendments to Institutional Order number 42, dated 27 September, 1973, and the underlined matter contained herein is new.

ARTHUR RUBIN
WARDEN

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

ADRIAN P. BURKE, *Corporation Counsel*

June 28, 1974

Hon. Morris E. Lasker
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York 10007

Re: Rhem v. Malcolm
70 Civ 3962

Dear Judge Lasker:

This is the second letter submitted pursuant to your directions of June 19, 1974 and your letter to "All Counsel," dated June 20, 1974, concerning the status of the City defendants' compliance with provisions of the Consent Decree, dated August 2, 1973.

1. Population. At present there are 411 detention and 111 sentence inmates in the MHD. As you are aware, the capacity of the Manhattan House of Detention is 902. We are running approximately 50 to 55% of capacity at present and have been for some time. The defendants exceeded the stipulated schedule for reductions in population. The only doubling that exists is on the 9th and 10th floors in the methodone detoxication unit and the mental observation unit. This situation is temporary in nature lasting not more than 7 to 10 days and is based upon medical recommendation. Insofar as the renovation to enlarge the size of the cells, that is part of our renovation program submitted to the Department of Public Works which was referred to in prior submissions.

2. Renovation. The renovation of the roof area and fifth and eighth floors were covered in my letter of June 24, 1974.

The basement recreation area was ready for use on the date of the order. However, as you are aware, (see my letter, dated May 21, 1974) the inmates do not wish to use this area.

As stated in my letter, dated May 21, 1974, the completion date for the rewiring is March, 1975. It takes about 8 weeks to complete a floor. The rewiring on the third, fourth and seventh floors have been completed.

As required by paragraph G on page 4 of the Consent Decree, the windows have been opened and security screening has been installed. This was completed on or about August 15, 1973.

3. Sanitary Conditions. The New York City Department of Health has carried out inspections at MHD monthly and issued reports for a period in excess of 6 months. The reports listed all the violations concerned with health and sanitation, set time limits for the elimination of such violations and reports were furnished according to the order. Said defendants have made every attempt to abide by the rules and regulations of the Department of Health and to comply with the time limits and recommendations in their reports. The Department of Health has indicated substantial compliance in this area.

4. Laundry. The court inquired into the feasibility of placing laundry equipment on each housing floor. The Department of Correction responded by indicating that this was not a feasible alternative. The plans for the laundry are contained in the so-called "shopping list" and we have indicated to the court the status of that proposal.

5. Disciplinary Proceedings. The provisions of paragraph 5 on pages 5 and 6 have been complied with. Compliance was achieved almost on the date of the order.

6. Inmate Council. The provisions of the order relative to inmate council have been complied with. The council was in operation prior to the date of the order in June of 1973. I am enclosing herewith a copy of the new guidelines, dated January 1, 1974.

Medical services

1. Paragraph "1" on page 7 was complied with in August, 1973.

2. Paragraph "2" on page 7 has not been complied with because of the question as to the future of the MHD and because the department did not want to commit funds when that question was unresolved.

3. With regard to paragraph "3" on page 7, each inmate upon admission to the MHD receives a medical examination. There are no x-rays provided at the MHD for the reasons outlined above. When a physician certifies an inmate is in need of an x-ray, he is then transported to an appropriate facility.

Paragraph "A" on page 8 has been standard practice at the MHD ever since the methadone detoxication program was introduced in March of 1972. Paragraph B has been standard operating procedure for many years. Paragraph C has been standard operating procedure since July of 1971. The provisions of paragraphs D, E, F, & G have not been complied with because the mental observation inmates could not be transferred to the Branch Queens House of Detention due to a lack of a psychiatric staff. The plan was to provide a reception floor in the area now occupied by the mental observation unit. We are still attempting to obtain the budgetary requirements for this purpose.

4. Affiliation with Bellevue.

Bellevue Hospital's proposal for an affiliation agreement with the Health Department for medical services in the MHD was rejected in September of 1973 on the basis of infeasability, progmatic difficulties and limited responsibility. Negotiations have not been continued. HSA has been attempting to hire specialty physicians to work in the MHD.

5. Renovation of the 5th and 8th floors. This was complied with in September of 1973 as our initial drawings submitted to the Department of Public Works included a provision of specialties for medical and psychiatric consultation on the 5th and 8th floors.

6. The provisions of paragraph 6 have not been complied with. This program was dependent on additional space becoming available through the transfer of the mental observation inmates to Branch Queens. As previously stated this was not forthcoming and an alternative plan has been developed. Compliance with this part of the order will be achieved in July of 1974.

7. Sick Call. The new sick call procedure was put into operation in August of 1973. It was in operation for approximately 2 months. However, due to persistent nursing shortages and the refusal of inmates to accept the procedure, and as a result complaints of the nursing staff because of threats, the procedure was discontinued after 2 months. HSA is reexamining the problem and is attempting to come up with a new acceptable plan. At present, the present sick call procedure is as follows: Primarily sick call screening continued to be accomplished by nursing personnel on the housing floors. As outlined in the order, the nurse takes each inmate's complaint and decides whether the inmate would benefit from the services of a physician. All psychiatric screening is done by the institutional psychologist and mental health workers who are assigned to each housing floor on a full time basis.

8. A personal health services pharmacist was appointed on March 1, 1974 and has the responsibility for consultation at all institutions.

9. Lab serology tests continued to be sent to the Health Department laboratories. Two other lab tests are now being conducted in house on the 12th floor, urine analysis, hematocrit. A 20 hour per week laboratory technician was added to the clinical staff in March of 1974. The lab serology tests were implemented in September of 1973.

10., 11., 12. The infirmary capacity requirement was complied with as of the date of the order. The infirmary census has remained at 10 or less names since the order was entered.

The career ladder was established in July 1973 for a mental health worker. There are no medical para-professionals except for the physicians' associates. Mental health para-professionals are receiving in-service training on a weekly basis by psychologists, often accompanied by psychiatrists. In addition, Dr. Leonard Moss has been conducting a weekly session for both Health and Dept. of Correction personnel on awareness of suicidal factors and general psychiatric pathologies. A nursing in-service program on suicidology began in early April. Other nurses from MHD are participating in this six-session course. Courses in mental health [redacted] tric clerical nurse specialists.

13. The process of centralized and comprehensive records system was completed on April 29, 1974.

14. Paragraph 14 was complied with as of the date of the order.

15. Paragraph 15 was complied with by August 31, 1973.

The following part of this letter is in response to your letter of July 21, 1974 inquiring as to the feasibility of providing alternate recreation at Rikers Island. The department strongly believes that this is not a feasible alternative.

The Transportation Division dispatches 28 vehicles each morning to all the institutions and hospital facilities of the department to transport inmates to all the courts in the five boroughs of the City of New York. On many days, due to the excessive work load, it is necessary for some of the vehicles to make a return trip to Rikers Island to pick up those inmates awaiting transfer to courts who could not be accommodated in the first sweep of the institutions on Rikers Island. These return trips are a result of either a shortage of vehicles on a given day, a shortage of personnel or a combination of both. After the completion of the initial dispatch assignment, all vehicles and personnel are utilized for picking up added starters for court appearance, emergency transfers, overloads to Rikers Island from other institutions located off the Island and any other interinstitutional transfers. After all this work is completed the vehicles are then utilized to begin the return of inmates from the various courts to the institutions from whence they came and to what other facilities the courts may direct. Wheelchair and stretcher cases are also moved to and from court from the various hospital facilities in addition to transfers to the hospital clinics of Bellevue and Kings County.

All of these movements are exclusive of transfers to the Greenhaven and Ossining facilities and all other movement of inmates by the special transfer squad of this division.

The average number of inmates moved in one day fluctuates between 1800 and 2000, approximately 1300 of which are moved by 2:00 P.M.

Due to the shortage of personnel and at times, equipment, it is necessary for the personnel of this division to work anywhere from 1000 to 1100 hours overtime per week.

There are 50 vehicles in this division of the type that can be used in the transportation of inmates and their deployment is as follows:

28 vehicles used in interboro transfers
4 vehicles used to transfer inmates to Greenhaven and Ossining
1 vehicle (Van) held for the 1:00 to 9:00 P.M. Richmond Run
1 vehicle held in reserve for replacement in the event of a breakdown of one of the vehicles transporting inmates to Ossining or Greenhaven
1 vehicle not being used due to the fact that it is beyond repair and will probably be relinquished at the first opportunity
13 vehicles deadlined this date due to mechanical difficulties
2 vehicles remaining which are used to replace vehicles that breakdown within the city; an occurrence which is commonplace each day.

50 Total

It is quite apparent that do not have sufficient personnel and equipment to carry out the basic function of the Transportation Division without the personnel working from 1000 to 1100 hours per week. Any attempt to add the additional function of transporting inmates to the Recreation Fields on

Rikers Island would only add to the amount of overtime now being worked.

Respectfully yours,

LEONARD BERNIKOW
Assistant Corporation Counsel

cc: Joel Berger, Esq.

MANHATTAN HOUSE OF DETENTION FOR MEN
125 White Street, New York, N. Y.

1 January 1974

The Detainee Liasison Committee

t various times, on the basis of written potitions or verbally expressed grievances, institution's administration has formed "ad hoc" committees (that is, a group of es from the housing area concerned, to deal with a specific problem) to discuss grievances with representatives of the administration. Also in March of 1972, at ime of the expansion of our institutional newspaper from a one page weekly, "Dear ", to a multipaged monthly periodical, we invited the inmate population to contribute poetry and sundry articles. In this respect we allowed for "Floor Reporters". group of floor representatives has been meeting with the Warden, Deputy Warden and ibrary Correction Officer on a regular basis. In addition to discussing items for ewspaper, time was allotted for dialogue regarding various institutional life pro- . Some problems were rectified, others were pending solution, while others are be- remedy at this time. Suggestions were made to improve communications and understand- which would ultimately promote smoother operations, for the betterment of the insti- n, as a whole.

the value of this communication has been recognized, we feel that the time has come band this progress in order to provide better representation for all general popu- n detainees. This group will meet with a panel of institutional staff, with the wing objectives in mind:

a) To foster better communications between detainees and staff which will hopefully enhance the rapport and morale, through better understanding of the needs and feelings of the other group.

b) To afford the detainee population a more viable (workable) channel for bringing legitimate grievances to the attention of the Warden and his staff, with the expectation that the administration will respond and prove the good faith and commitment of the Department of Correction to remedy such legitimate grievances, where possible.

c) To encourage input and feedback to the detainees and staff in order to increase the efficiency of the institution.

d) To assist inmates in receiving response to grievances which are outside the jurisdiction of Department of Correction. (medical services, courts, legal aid, etc.)

COMPOSITION OF THE COMMITTEE

1) Chaired by the senior member of the custodial staff present. (Warden, Deputy Warden, Program Assistant Deputy Warden or Program Captain).
2) Additional staff will consist of the Library Correction Officer, two housing floor "1" officers, serving for two consecutive meetings, on a rotating basis; a representative from the Correction Aide Program; and a representative of the Board of Correction.
3) One Detainee Delegate from each housing quadrant on floors: 4, 5, 6, 7, and 8, with the exception of punitive segregation.
4) When the need arises, members of support services and outside agencies will be invited to supply information and assist in solving problems in their scope, when available. (Food service, medical and mental health, courts, legal aid, etc.)

GUIDELINES

In order that there be no misunderstanding as to what we can hope to accomplish, certain must be established by the Warden.

1) The Committee's function is in an advisory capacity only, and does not possess policy making determination. This rests in the hands of the Warden and the Department of Correction.
2) Political ideology will not be a part of this committee's agenda.
3) The Warden reserves the right for the Chairman to dismiss a detainee delegate, if in the opinion of the Chairman, said delegate is a continual source of disruption to the good order of a meeting. A reoccurrence of such behaviour will result in the Delegate"s replacement by the Alternate from his floor quadrant; if meaningful communications are to exist, we must conduct ourselves as gentlemen.
4) Detainee representatives will not be transferred on "overload" while serving in this elected capacity.
5) There will be two meetings each calendar month, on the 1st and 3rd Wednesday of each month. If a scheduled meeting should fall on a holiday, said meeting will be held on the following day, (Thursday). These two meetings will usually be of different composition and character, in that the 1st monthly meeting will usually be chaired by the Program Assistant Deputy Warden or Captain, where minor problems may be resolved immediately and those requiring investigation and discussion with the Warden and his staff being placed on the agenda for the next meeting, on the 3rd Wednesday of the month, when

...e Warden will be present.
6) Special meetings may be convened at the Wardon's direction.

RESPONSIBILITIES OF DETAINEE DELEGATES

1) To raise those problems in the council put forth by the housing area detainees.
2) To report back to inmates on housing floors action of the council as objectively as possible.
3) To set an example in deportment and attitude, to be impartial and to be aware that a trust has been placed in him, by both detainees and staff.

ELECTION PROCEDURES

In order to afford a fair and democratic process for detainees to select their own representatives to the Detainee Staff Liaison Committee, elections will be held as outlined below:

ELECTIONS - To elect representatives from each General Population quadrant to Detainee Staff Liaison Committee.

ELECTORAL SYSTEM -

A. A secret ballot with all general population detainees casting votes in their respective quadrants will be held. The 3 detainees receiving the highest amount of votes will be elected in order of the amount of votes received as follows:
a) Delegate b) Alternate c) Sub-Alternate

B. Ballots will be distributed during the evening after supper lock-in period, each detainee personally being handed an official ballot. This distribution is to be performed by members of the Correction Aide Program and overseen by custodial program personnel.

C. One name only shall be entered on this ballot in a printed, clear and legible manner.

D. The respective quadrant electorate shall be determined by the quadrant lock-out precedure.
EXAMPLE: 5UF locks out in the 5B quadrant, therefore that section must vote with 5 Upper and Lower "B".

E. After all ballots have been distributed, the same ballot distributed, the same ballot distribution team shall then pick up the marked ballots by having each inmate place same into a locked ballot box. This shall be taken to the bridge area for a vote count.

F. A committee made up of the ballot distributors plus the floor reporter and the Captain in charge of this program, shall count the ballots and determine, announce and record the results into a ledger provided for this. This procedure shall be repeated by the above mentioned personnel on each of the housing floors concerned.

SUCCESSION TO OFFICE - NEW ELECTIONS

a) At the end of two month period, the Delegate will step down and be replaced by the Alternate who will also not be eligible for re-election.

b) An election will be held every 2 months to elect a new Alternate and Sub-Alternate. A Sub-Alternate who has remained in that capacity may run for re-election.

DELEGATES - Will act as representatives to Detainee Liaison Committee.

ALTERNATES - Serves as Alternate for a 2 month period, does not attend meetings unless Delegate is unavailable to attend, due to court appearances, bail, etc. At the end of 2 month period automatically moves into the Delegate position.

SUB-ALTERNATES - Fills in for Alternate in his absence due to court appearance, illness, etc. In the event of the absence of both Delegate and Alternate, the Sub-Alternate will act as Delegate for that period.

NON-AVAILABLE DELEGATE, ALTERNATE OR SUB-ALTERNATE - In the event of absence for any reason of all three, the next in succession (next highest amount of votes) will fill in as Delegate. The results of the election (amount of votes) will be posted in each section.

2. While we desire to give detainees the opportunity of selecting their delegates through an election process, we must also stress the importance of electing a person who you feel to be intelligent, can express himself well, is a good listener and has the interest of all detainees at heart and not just his personal ax to grind. In short, if there is to be a meaningful dialogue regarding institutional problems, you must be represented by persons that you feel can express the position of the detainees in a coherent, reasonable manner. This program can succeed only if Delegates do not take a demanding position. On the other hand, if a subject is brought up by either detainee or staff, it can be discussed, weighing the pros and cons, until an understanding is reached.

P.M. SCHAEFER
WARDEN

July 2, 1974

Hon. Morris E. Lasker
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: Rhea v. Malcolm
70 Civ. 3364

Dear Judge Lasker:

This letter is submitted in opposition to the plaintiff's proposed order noticed for settlement on July 3, 1974.

The proposed order would close down the Manhattan House of Detention for Men (MHD). To do so would leave the City in a very precarious position. The Department of Correction, at this time, has no place to house the MHD inmates. The department does not have available two cell blocks at the New York City House of Detention on Rikers Island because they are now under repair. A cell block houses 240 people. Although we do not know when the repairs will be completed, we estimate the job will be finished on or about October 1, 1974.

The situation is especially critical at present because the population of the department facilities customarily increases during the summer months and continues to do so until November. We believe the provisions of the plaintiffs' order are inappropriate in light of the substantial improvements made at the institution. While many other important improvements have been made, I think it very significant, as mentioned in my last letter, dated June 28, 1974, that the present population of the MHD is between 50 and 55% of capacity.

Respectfully yours,

Leonard Bernikow
Assistant Corporation Counsel

cc: Joel Berger, Esq.

EXTRACTS FROM
TRANSCRIPT OF PROCEEDINGS

of the cell drawn?

THE COURT: I actually visited the Tombs and I have in mind the things stated.

Q Mr. Scott, do you have any windows in your cell?

A No, I don't.

Q Are there any windows near your cell?

A Yes, there are.

Q How many?

A Two.

Q What type of windows are they? That is to say, can you see through them?

A NO, you can't.

Q Does any light come into your cell from these windows, these two windows?

A No.

Q What light do you have in your cell?

A Just the electric light from the light bulb, that is all.

Q Is this light adequate for purposes of reading?

A No. Not at all times, that is.

MR. KRANIS: Your Honor, may I object without some foundation being laid as to what is adequate.

THE COURT: When you say adequate, what do you mean, Mr. Scott?

THE WITNESS: Let's say if you put a new light bulb in it would be adequate. When the light bulb is in you have a very thick glass over the light bulb itself to keep the inmate from taking the lightbulb out.

If this glass over a period of time gets dirt or dust on it this prevents the effectiveness of the light to come into the cell, also if the light bulb itself starts getting weak.

THE COURT: When you say it isn't adequate you mean it's not adequate for what, reading?

THE WITNESS: Right, for reading. That is about all we can do in our cells is read.

THE COURT: But that is what you are talking about. You can always see a little bit, I take it?

THE WITNESS: Right.

THE COURT: All right.

Q Mr. Scott, can you see the outside through the windows near your cell?

A No, sir.

Q Does any fresh air come through these windows?

THE COURT: Aren't the windows solid or am I mistaken about that?

Are we talking about windows made of glass brick?

MR. HERMAN: Yes, they are translucent.

THE COURT: But they are solid, aren't they? They are removable?

MR. HERMAN: There is a small area that does open.

THE COURT: All right. That is in some cases.

THE WITNESS: Would you repeat the question?

Q Does any fresh air come through these windows?

A Very little.

MR. KRANIS: Your Honot, I think the witness has testified that there are no windows in his cell. I believe this series of questions related to the windows in his cell.

THE COURT: He asked about both the windows in the cell and in the area.

MR. HERMAN: These windows are outside the cells.

Q Does your cell have a vent for fresh air?

A Yes, it does.

Q Does the vent allow fresh air to come into the cell or does fresh air come into the cell through the vent?

A No, it doesn't. Presently the vents aren't working. They are clogged with soot and dust which

leaves -- especially during the summertime it makes it very uncomfortable because we realize the vent is above the toilet. It's supposed to ventilate the cell itself but it doesn't so this leaves a very foul smell in the cell area.

Q Mr. Scott, have you ever seen a Correction Department person clean out the vent or attempt to clean it?

A No, I haven't.

Q Have you ever attempted to clean your vent?

A I have tried once but it's very difficult because the vent is set behind the wall which is part of the cell where there are holes bored into the backing of the cell and then the vent is set behind that which makes it very hard to get to to clean.

Q Could you describe the present condition of your vent?

A It's clogged. There is no air coming in from it at all. It is clogged up with soot and dust.

Q You were in the Tombs during the summer?

A Yes, I was.

Q Could you describe the heat situation, the temperature situation to the Court?

THE COURT: I assume it varied in different

places.

Q In your cell area, that is.

A Are you speaking just about the cell area or you want the lock-out and everything?

Q Your tier.

A Take my side, like I said, on my side you have three sections looking out. This is very uncomfortable because it's very hot. We have no air-conditioning. We have two fans onthe floor. We have no fan to accommodate each side adequately so once a person --

MR. KRANIS: I object again. When he is talking about adequately, that is.

THE COURT: I will have to take the lay use of that. I don't think Mr. Scott's opinion as being an expert on the subject -- when you say it isn't adequate what do you mean?

THE WITNESS: I am talking about for my personal reference that being there among 30, 20 to 30 inmates and we are anything trying to find relief of the heat and there is a fan up front and it's blowing out to where the officers are sitting, the fan is not adequate because it's not serving us any purpose at all.

THE COURT: That is a good enough explanation. All right.

qs10 Scott-direct

Q During the cold weather months that you have been in the Tombs, is the Tombs well heated?

A No, it's not.

MR. KRANIS: I object, your Honor, both to the fact that the question is leading and to the fact that no foundation has been laid for that type of question.

THE COURT: Well, you are technically correct about it being leading but the same question can be asked to describe what the heating conditions are like in your area.

Q Could you describe the heating conditions in your area in the winter?

A During the winter months it's very cold. You will find inmates walking around with blankets pulled around them with the coats on. We generally don't receive any heat on the floor until around one or twelve o'clock in the afternoon.

MR. KRANIS: Objection.

THE COURT: Why?

MR. KRANIS: He has not indicated whether or not he knows how the heat is coming up. If he has testified whether or not he is cold during the winter that is one thing, but I question his ability to testify whether heat is coming up --

THE COURT: You will be free to cross-examine him as to the limitations of his testimony. I understand your desire to see that the information coming before me is as accurate as possible but I don't think it needs to be done by objections.

I think the best way to do it is by cross-examination.

Q Would you continue with your description of the heating situation in the winter on your floor.

A Like I said.

THE COURT: Since the question was raised, Mr. Scott, you said the heat doesn't come up until late in the morning.

On what basis do you say that?

THE WITNESS: Well, my lock-out area, I would say every three to five feet there is a radiator. We could generally feel the heat if it's coming Up from the radiator. This is how we know.

THE COURT: You have been there since July you say. Before that though you were there from December to May, is that right?

THE WITNESS: Yes.

THE COURT: You have been there through practically every kind of weather by now?

THE COURT: Did you hear this?

THE WITNESS: Yes, I did. No doctor and nurse came up with the medication and no one came to take him downstairs. He started calling for the officer. The officer didn't respond until everyone on our side started making noise and calling to the officer. He then came and was locked out of his cell and taken down to see a doctor.

MR. KRANIS: I object. Again he doesn't know what happened.

THE COURT: You just know he was taken out of his cell?

THE WITNESS: He was taken out of his cell.

THE COURT: All right.

Q Mr. Scott, to the best of your knowledge is there a recreation program at the tombs?

A Yes, there is.

Q Could you describe it to the court?

A Well, the recreation, during the summer the recreation consists of going on the roof for two hours a week. During the winter recreation consists of a movie once a week.

Q What activities can you participate in on the roof?

A During the summer on one part of the roof you have a basketball court, on the other side you have a volleyball court and a ping pong table.

Q Does everybody that goes to the roof participate?

A Well, when we have recreation they take two sides up at a time.

THE COURT: How many men is that about?

THE WITNESS: Well, due to the fact that they take C and D sides and you have more men on C and D than you have on A and B --

THE COURT: Let's take your side, C and D.

THE WITNESS: You have more men going up. The basketball court is only large enough to hold, let's say, anywhere from eight to twelve men playing basketball. You have only one court. Volleyball is only big enough to hold eight to ten men. Then you have only one ping pong table. So you must say you have maybe 30 to 35 or more men going up and you might have 15 or 20 actually taking part in the recreation itself. Some people don't even get to take part in the activity that day.

MR. KRAMIS: Objection.

THE COURT: When you say some people, what do you mean?

THE WITNESS: Well, if they are playing basketball

and you have two or three teams waiting, we get only two hours a day --

THE COURT: Is it two hours a day?

THE WITNESS: Two hours a week. We don't actually get up there to have a full two hours to begin with. So if you get up there and one game is finished, the third team or the fourth team might not play. So they just lose out.

Q Mr. Scott, if you are in court when your side goes to recreation do you get to go another time?

A No, you don't.

Q When was the last time you were at the roof?

A In September.

Q And what types of recreation have you had since September?

A Only the movie once a week.

THE COURT: Is the roof being used these months?

THE WITNESS: No, they are not. We are told that the winter schedule is in and because of the weather conditions the roof is closed.

Q Do you have any physical exercise at all during the winter?

A Not unless someone might take it upon themselves to exercise in their own cell area.

Q Do you exercise?

A Yes, I do.

Q What do you do?

A Push-ups, sit-ups, maybe running in space -- that's about the only type exercise you can do in your cell area.

Q Since September have you been outside at all?

A As far as recreation?

Q Yes.

A No, I have not.

Q Mr. Scott, when you were admitted to the tombs were you given a uniform?

THE COURT: Are you speaking about the most recent time?

MR. HERMAN: Yes.

A No, I was not.

Q What clothes do you wear?

A My own clothes, clothes I have one.

Q Mr. Scott, how do you wash your clothes?

A In the shower.

Q Is that the only facility for washing clothes?

A Well, you have the shower and then you have a bucket that I use to wash my sneakers and socks and stuff like that. But generally the shower is the most

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commonplace for you to wash clothes.

Q Is there a laundering machine which you can use, a washing machine?

A No.

Q Mr. Scott, is there a telephone on your floor?

A Yes, there is.

Q When can you use the phone?

A Any time that we have a lock out period. We have three lock out periods a day, two hours each time. We are allowed to make one phone call a day within them three lock out periods.

THE COURT: You mean you can make one phone call in each lockout period?

THE WITNESS: No, just one call a day.

Q Mr. Scott, are you permitted to receive visitors at the tombs?

A Yes, I am.

Q How often can you see a visitor?

A My visiting days are on Tuesdays and Fridays. I can receive a visitor twice a week a half hour each visit.

Q Can you describe the circumstances under which you receive a visitor to the court, please?

A Well, they have a visiting booth with a glass that is about eye level with a phone in it.

THE COURT: Eye level when you are standing up, isn't it?

THE WITNESS: Yes. The prisoner is surrounded on two sides of him with two steel partitions with a screen door behind him. The visitor has two steel partitions with nothing behind him. That is it.

THE COURT: You talk by phone?

THE WITNESS: Yes.

Q Do the phones which you have used work?

A I have ran across occasions where I have had some bad phones, where I could here my visitor and my visitor couldn't hear me, and there were times when neither phones were working.

Q Does this happen often or is this just occasionally?

A You know, we have phones that are bad and phones that are good. It happened occasionally at first, and I took it upon myself to go to a booth that is working.

Q Mr. Scott, can you see you visitor?

A My mother and my sister and my father I can see. Brenda Emory, who comes to see me quite often I can't because she is short.

THE COURT: This is a woman, not a child?

THE WITNESS: Yes.

Q Can you see her at all?

A Generally if I stand up on my toes or use the door as a footing I can see her.

Q Do you have a seat?

A No.

Q Do you know if your visitor has a seat?

A No, they don't.

Q Has Mrs. Emory ever been given something to stand on to the best of your knowledge that you could see her?

A No, she hasn't.

Q Mr. Scott, since coming to the tombs have you ever been disciplined by an administrative official?

A Yes, I have.

Q How many times?

A Twice.

Q When was the first time?

A The first time was in, I would say, January of '72, when I refused to lock in because I didn't see a doctor. The second time was also in '72, February of '72.

Q What was the punishment in that case?

THE COURT: Which one?

MR. HERMAN: The second.

MR. KRANIS: Counsel is assuming facts.

THE COURT: Well, if there was no punishment. Was there any punishment?

something, either getting them pulled or fixed. They didn't get fixed until I was placed on administrative stay.

THE COURT: When was that, how long after it happened?

THE WITNESS: Five to six weeks after the accident.

Q Were your teeth pulled?

A They were pulled.

Q Have they been replaced?

A No, they haven't.

Q Which teeth were pulled?

A These two right here.

Q Show the Court.

A These two here.

THE COURT: All right.

Q Mr.Scott, finally, could you describe to the Court your average day at the Tombs, your schedule at the Tombs?

A An average day at the Tombs --

THE COURT: Every day is average, isn't it?

THE WITNESS: Yes, every day is pretty much the same except for Saturday and Sunday.

In the morning between 6 and 6.30 our cells are

opened and we will come out for breakfast. After breakfast we will go back to our cells. Those who are going to court will be permitted to get a shave and the old procedure is that after they shave they would go back to their cells.

With the new procedure they would have to dress and stay out because they would be called to court at 7.30.

Between 7.30 and a quarter of eight one officer will come around and they have a count. At 8 o'clock the shift changes and another officer will come by and they have another count.

At 9 o'clock you have the lock-out bell and everyone locks out from 9 to 11. At this time the radio is on.

You could go into our little section on our side. You can make phone calls. You can take a shower. You have sick call. Those who are going to the library or go to school will do so.

You play checkers, chess, write letters, take care of your law material right there in that section.

At 11 o'clock when we are still locked out the the noon meal will come up. We will get our food, eat and then lock back in.

The area is cleaned by voluntary help on the side.

At one o'clock we have a lock-out bell. We come out. At this time you go to the same area. The only difference is at this time you have the television and the radio playing on the same side.

THE COURT: This is from one to three?

THE WITNESS: Yes, sir.

If they have shaves or haircuts for that side you can be permitted to get a shave or a haircut.

THE COURT: How often are you allowed to have a shave?

THE WITNESS: It goes in rotation. On the seventh floor we know that Thursday we will get a shave because this is our day to go first.

On Monday if A side goes then a lot of people from A side are shaving and then B and C side, D side might not get a shave Monday.

They might get one Tuesday and they might not get one Wednesday.

THE COURT: You get a shave twice a week, something like that?

THE WITNESS: Generally twice a week you get one.

THE COURT: Okay.

THE WITNESS: At three o'clock you have the lock-in bell. You go in and you have the count at four. Between 4 and 4.30 you would lock out for the evening meal.

At lock-out you would eat and then you return to your cells after you have eaten.

At 6.30 you have the lock-out bell. At this time you return to the same area, the televison and the radio will be on once again, you play cards, checkers, chess write letters.

At this time you have mail call and visiting for those who have visits that particular day.

Then at 8.30 you have the lock-in bell and that is it.

Q Mr. Scott, you mentioned that you get locked out the first time between 6 and 6.30.

A Yes.

Q How were you woken up in the morning?

A Generally on the seventh floor the radio was turned up real loud. This wakes everybody up for breakfast.

Q During the day you mentioned that the radio was kept on. Who chooses which station the radio is on?

A The officer.

Q How loud is the radio kept during the day?

A Well --

Q What volume is it kept?

THE COURT: It's a pretty hard thing to answer except to say quiet, loud or very loud.

THE WITNESS: Generally in the morning it's loud because there is not too much activity. In the afternoon it's not too loud because you have the television playing.

If you are up front you don't hear the radio but you hear the television.

THE COURT: What about the television, is that loud in the afternoon?

THE WITNESS: On our side, the television doesn't go but so loud but it's still loud.

Q Mr. Scott, when the time for locking out comes can you stay in your cell if you prefer to?

A No, you can't. If someone is sick or got a headache or not feeling well he has to lock out. He has to go into the section. There is no way of him staying in the cell.

MR. HERMAN: I have no further questions, your Honor.

Dario is available in the institution?

A Yes. I have seen some.

Q Are any magazines available in the institution? Do you receive Ebony?

A No.

Q Do you receive any magazines in the institution?

THE COURT: Does he personally?

Q Are they available in the institution?

A I have seen Newsweek. I have seen Time Magazine or Popular Science, Boating, and Auto Racing. That's about all. There might be more.

THE COURT: The newspapers are available on the floor; is that right?

THE WITNESS: Yes.

Q What about the magazines? Are they also available on the floor?

A The large portion of the floor; some are sent down to the floor along with certain library books.

Q Have you ever had to wear a blanket at night to keep warm?

A Yes.

Q Outside of your cell?

A No. On two occasions it was extremely cold in the Tombs and I wore a coat outside. During the night, on occasions

that I was sick, I wore a coat and a blanket, but this was inside my cell.

THE COURT: I don't quite understand what you mean by outside your cell.

THE WITNESS: I was talking about -- during lock-out time.

Q What inmates have you seen wear blankets? Can you identify them?

A During the winter we had at one time David Allah, he wore a blanket; there was other inmates. To mention their names offhand I could not state, you know, whether the names would be correct; but I do know for sure David Allah and Louis Rivera.

THE COURT: You say they wore them. They wore them in lockout?

THE WITNESS: Yes.

THE COURT: You would not see them in their cells, would you?

THE WITNESS: No.

Q I believe you indicated at one time that your tea was pretty sweetened; is that correct?

THE COURT: I think I recall that he said sometimes the tea was too sweet and sometimes it was not sweet enough.

THE COURT: Putting it the other way, you mean if it is good enough for them it is good enough for the staff? Is that right?

THE WITNESS: Yes.

Q Mr. Anderson, did you observe the area where the inmates ate their meals?

A Yes, sir. They ate in what we always refer to as the exercise corridor where they lock them out in front of their cells. Some of the inmates were sitting down in the shower room on the floor, or on a little ledge there eating their meals; others would be crouched in the corners some place. There were some tables. Some would be eating there, and there was a standard put out by the UN, figures, that you need 24 inches of table space for each inmate in a facility.

THE COURT: Did you have any way of observing whether there was adequate table space and some people just didn't want to sit at the table? Or are you saying there wasn't adequate space?

THE WITNESS: There wasn't adequate space.

THE COURT: That is clear, there wasn't?

THE WITNESS: Yes, sir.

Q Mr. Anderson, could you discuss the relative merits of having inmates eat in a lockout area right

outside their cells, as the case is at the Tombs, as opposed to eating in a dining room area?

A I prefer them eating in the dining room area.

THE COURT: Why?

THE WITNESS: Well, here again it is to get them out of the environment, to get them away from that cell area has a good psychological impact on them. Also, it helped to keep down the infestation of vermin; there is no food then allowed in the cell areas. And you can prepare and keep the food much better, as well as have less waste. When you prepare it and send it up to the floor, you send up a serving for every man on the floor, you have to, and if something isn't used it is wasted. But in a central dining hall they can hold this down to a great degree.

THE COURT: Because it is right next to the kitchen, you mean?

THE WITNESS: That is right. They only give a person what he wants to take and so forth.

Q Mr. Anderson, did you observe the lockout areas on the floors that you visited?

A Yes, sir, they were pretty well crowded, most of them.

Q Do you know what the lockout area is used for

at the Tombs?

A Basically it is a recreation area. If they are not in the cell, they are in that area.

Q Could you describe to the Court the scene or scenes in the various lockout areas that you observed?

A Well, it was quite apparent there was considerable frustration among the inmates being crowded together in the area.

Q What is your basis for saying there was frustration?

A Well, they kept yelling at us, "Look at that!" "See that!" "Check on that !" and, of course, we had been cautioned, one of the stipulations that was set up to us before we started our tour, that we were not to talk to the inmates.

THE COURT: You refer to "us" and "we".

THE WITNESS: The escorting officer of the Tombs made the request to us that we were not to converse with any inmates.

THE COURT: He requested you and who else?

THE WITNESS: The entire group.

THE COURT: What was the group?

THE WITNESS: It was members from the Legal Aid Society.

THE COURT: It was purely in connection with this case?

THE WITNESS: Yes, sir.

THE COURT: I am sorry I interrupted. You were talking about the fact that there were inmates who addressed remarks to you, but you had been instructed in regard to talking to the inmates.

THE WITNESS: We were not permitted to.

THE COURT: Did you consider it unusual to receive so many remarks from the inmates? Isn't that fairly frequent In the jail?

THE WITNESS: Yes, sir. We generally do get complaints and so forth of this nature. But there is one thing that I tink we had to consider. It is difficult to describe it.

After you have been around these places for a few years, if you excuse the impression, you get a gut feeling of what things are like and what is going on, and the tension was extremely high. There were some floors the escorting officer tried to discourage us from going in, because things were hot there, and I could see why he felt this way, and I cautioned the people who were with us on one of the floors to be very careful what you do in this area, that if we are pointing out anything we

do not do it in front ofthe inmates because I was afraid at that very moment we could just ignite a spark that would create a disturbance.

Q In your judgment was the lockout area which is provided in the Tombs acceptable for recreation purposes as far as the Correction standards are concerned as far as you are familiar with them?

A No, sir, because there was no room for moving around; they could not have any activity. About all they can do is play checkers, and I didn't see anything like that, or cards.

THE COURT: You have approved the Tombs in the past for the use of Federal prisoners?

THE WITNESS: Yes, sir.

THE COURT: Were the conditions with respect to the lockout different at that time than they are at the present?

THE WITNESS: Not significantly, no, sir.

THE COURT: You still felt they were acceptable? Is that right?

THE WITNESS: We use it very limited. The only thing we put over there was security cases that could not be handled or separation cases that could not be handled at West Street.

THE COURT: You thought it was adequate as far as your responsibilities for a few people were concerned, but you feel differently when the number is 1300 people? Is that it?

THE WITNESS: Yes, sir.

Q Mr. Anderson, what type of recreational facilities would you say are necessary for good Correctional practice?

A Well, the recent UN standard says that you should have an outside recreation area where men can have at least one hour --

MR. KRANIS: The witness is talking about standards, UN standards and ACA standards. He has never indicated that these standards are applied in any way, shape or form, or that he has ever applied such standards.

THE COURT: This is the 20th time I will say you can cross-examine. You can always point out the weakness in his testimony, and that you can bring out on cross-examination.

MR. KRANIS: It is not only weakness; it is objectionable testimony.

THE COURT: I certainly don't agree. You mean that I am not even allowed to be educated, to learn what

the UN says on this subject? The City says they want to do something about this. Why don't they get it out in the open so we can all be intelligently advised and know what is going on.

MR. KRAMIS: Because this is not the way.

THE COURT: If you want to keep raising it on the record, go ahead and raise it. You are the ones who don't want to have a big fiasco about this case, and so on, and it seems to me you are making it more difficult, rather than less so.

Q Would you comment on what proper Correctional practices are as far as recreation is concerned?

A Well, you definitely need an area to get the inmates out of their living quarters where they can have various types of games, a ping-pong table or quoits, things of that nature, and also I feel very strongly that you need an area that can be designated as a quiet room so the people who want to get away from the clamor which is inherent in a lot of these facilities can go to and have quiet, maybe to study on their appeals or to write a letter to the family home or think out problems.

THE COURT: May I ask this:

I recently visited the detention facilities at West Street, and I'm not trying to put you on the

spot, I'm just trying to zero in on the meaning of your testimony, are there any quiet areas at West Street such as you are now recommending?

THE WITNESS: No, but the facility does not permit it, but they have plans and are working diligently and have been for several years to replace it.

THE COURT: I am not suggesting facilities at West Street are ideal. I think everybody connected with that institution, Judge or Warden, or anybody else, are quite aware they are not, and I know they are building a new facility right behind the Court House. But I just want to be sure that we agree that there is no such arrangement over there at the present time? Is that right?

THE WITNESS: No, sir.

Q Mr. Anderson, did you observe the roof at the Tombs?

A Yes, sir, we were up there, and it had not be used that day, and we were told that it was not used extensively for the reason that they were having trouble with leaks, and if they let the inmates up for a day or two after it rained it created more leaks for them, so they had to let the entire roof dry out before it could be used. And in place of that they would take them

to a movie on the floor below, I believe it was.

Q Mr. Anderson, it has been stipulated by the parties that the roof is not in use between the months of October and, I believe, May, and during that time the inmates have no outdoor physical exercise. Could you comment on the practice of having no outdoor recreation for this period of seven or eight months?

A It is not good, and when I worked here in New York City at the Detention Headquarters we had many a day in January where we could use our roof area, and we did, and I find this outside recreation makes the efforts and the jobs of Correctional people much more pleasant as the inmates take their frustrations out in handball and other games they could play in this area, rather than taking it out on the staff.

THE COURT: Or each other.

THE WITNESS: Yes.

Q Mr. Anderson, would you describe what you observed to be the morale and attitude of the inmates that you observed?

A As I mentioned previously, the tension was very high. I saw the food waste, and the general appearance, most of the inmates had a distressed look about them.

Q Mr. Anderson, what did you observe about the

THE WITNESS: The staff that I had talked to, and I must say this is not just recent, this has been through the years, all felt that assignment to the Tombs was punishment duty, it was one of the less desirable institutions to work at, and they all were just trying to get out of this into another assignment as quickly as possible.

MR. KRANIS: Objection, your Honor, on the grounds that the testimony of the witness is hearsay, that there is no indication that every employee of the Department of Correction is an agent of that Department for the purpose of making an admission against interest.

THE COURT: I don't think that is an admission against interest. They consider it punishment. Th is is solely for the purpose of letting me know the basis of his reach ing the conclusions that he has.

You may call witnesses in to undo the basis of his conclusion. How can I understand what he has to say unless I hear what he has heard. I don't accept it as true that all people feel that way. They may or they may not.

Mr. Anderson, I take it, however, that you believe they meant what they said?

THE WITNESS: Yes, sir. And another indica-

important?

THE WITNESS: Yes, sir. My impression was that the majority of the staff are afraid of the inmates, they are afraid to go in among them.

THE COURT: You are talking about the prisoner contact?

THE WITNESS: Yes, sir, I saw very little of it in my tour. Most all the time every place where we went the officers were right in the center area by the telephone at the desk there where there was very, very little observation of what was going on among the inmates.

THE COURT: Are there other factors which you mention which affect the morale of the employees of the Tombs?

THE WITNESS: Well, yes, I think a case such as this coming out and they read in the papers of these things, it certainly does not make them proud to be part of an organization of this type.

Q Mr. Anderson, can you compare your observations about the morale of officers presently with the office with the morale of the officers immediately prior to your retirement?

A Well, of course, this is a personal assessment,

but I would say it's much lower.

Q Much lower when?

A At my last visit on October 12 of this year.

Q What makes you make the judgment that in 1970 the morale was higher? What did you observe then?

A Well, the general overall conditions of the facility. Through the years this is one thing I have found, that if some of these things start to slip, everything else in the institution is generally going the same way. It gives you an indication that you have to check everything rather closely, and this is what I find is just about the rule. If that slips, why, your security slips, your food slips, your program slips, and I am afraid one of the things that has happened here in the Tombs, they had this trouble and naturally they had to be concerned, but everything that is written -- there's a booklet put out by the American Correction Association on riots, and they specifically spell out that as soon as possible after the riot is over you get back to normal operation, resuming programs and activities you had prior.

THE COURT: Mr. Anderson, obviously I am interested in the book, but I can read the book. Your testimony as to the book would be relevant only if you are implying or stating that you agree with its con-

we're attempting to show through a classification system that a lot of these allegations by the defendants are unfounded and could be solved by a classification system.

THE COURT: All right, I will allow it subject to connection.

Q Did you observe a classification system on your visit to the Tombs?

A Well, my impression is the entire facility, no matter what floor you went on, just about was maximum security.

THE COURT: How does that respond to the question of classification? You think in terms of whether everybody has to be classified as maximum security?

THE WITNESS: Yes.

THE COURT: Is there any variation in the Tombs at all as far as that aspect of classification is concerned?

THE WITNESS: Well, they have different floors for different level of cases like one floor would be for homosexuals, another would be for high bail cases.

THE COURT: But isn't everybody kept under pretty much the same circumstances? I didn't think there was a question about that?

Is there, Mr. Kranis? Do the defendants

contend that there is any substantial difference in the security arrangements on the different floors?

MR. KRAMIS: At the present time we do have a classification system.

THE COURT: Let me hear what the system is.

THE WITNESS: Well, it is basically by offenses. The drug addicts are in a certain area, the homicides are in another area, the homosexuals, and on down the line of the type of prisoners that they receive in, they classify them by offense. This is not a good procedure, because there may be some people charged with that type of offense who needs further investigation, and you classify each man on his own personal background.

THE COURT: Tell me what in your opinion should be the objectives of the classification system? What is the purpose of classifying them, aside from security?

THE WITNESS: Well, then you can work with a man and help him. We are in the rehabilitation business today, and you have to know a little bit about them to start working with them and hopefully we can start this in some of the institutions.

THE COURT: I think that an institution which is intended at least to have people only temporarily and where even at worst, a large number of people are

housed only temporarily you can really conduct any meaningful rehabilitation program as distinguished from, let's say, a recreational program, or others, to keep them as happy as possible while waiting.

THE WITNESS: I'm convinced of that, sir.

THE COURT: You are?

THE WITNESS: Yes, sir.

THE COURT: Do you know of any institutions where such programs exist?

THE WITNESS: At a time they were doing some of this in Brooklyn. I don't know whether they are today. They were having community involvement and working with people, assisting them, getting jobs for them, trying to keep the families intact, trying to preserve the job they have, trying to assist them in getting bail so they can keep their positions.

THE COURT: So far as you know, is any of that program conducted at the Tombs?

THE WITNESS: Not that I am aware of.

THE COURT: Getting back to the subject of classification, can you give me an idea of what sort of questions or material you think ought to be explored in arranging an adequate classification system?

A Well, I have a small form, I believe I have

with me, that I have been using and experimenting with, asking them some basic questions, and it seems to me they have fairly good promise.

It was developed by the Federal Bureau of Prisons. I don't have it right handy here. I can get one and send it to you. And it has been tried in several institutions.

THE COURT: Can you give me orally a description of the elements of it? I just can't read it. If you want to introduce it in evidence, Mr. Herman, it is relevant. Introduce it in evidence. However, I think it would help to have an explanation from Mr. Anderson.

Q Mr. Anderson, will you explain to the Court what this is --

THE COURT: Mark it for identification.

A I might mention that this was developed primarily by Mr. Mark Richmond, an Assistant Director of the Federal Brueau of Prisons.

MR. KRAMIS: Your Honor, I would object to this as irrelevant. He has not testified he participated in the drafting of this document.

THE COURT: Well, he has not said somebody told him this. Apparently he knows what it is.

THE WITNESS: I am using it myself.

(Plaintiff's Exhibit 1 marked for identification.)

THE COURT: All right.

Now, what is the description of this?

THE WITNESS: Prison inventory, it is instructions for prison inventory.

THE COURT: Is this a check list for use of correctional personnal?

THE WITNESS: Yes, sir.

THE COURT: And is it used in connection with classifying people who are temporarily detained as well as those who are convicted?

THE WITNESS: Yes, sir.

THE COURT: All right.

Go ahead with your questions.

Q Mr. Anderson, would you describe the system which you use in your jail?

A We are setting up and using this to try to determine the needs of the individual. It gives us quite a bit. In fact, we are combining some of our other record-keeping into this. It comes down to the man's status in the institution, whether he is awaiting trial, or probation violation, things of this nature, or any possibility of detainers coming in on the individual from other offenses, the type of offense he is in on, whether it is against a person, against the public, a sex offense and so forth, and the estimated time; also whether it is a felony or a misdemeanor, the estimated time that the individual will be in the facility, whether there is a good chance of him making bail and being out shortly. His age, sex, of course, his employment history, how long he's been there, his work skills, work status, whether he has had a full time job or just moving him around from job to job, and how long he was there, whether it is six months or over a year, the length of employment.

His education, whether or not he has been in

school, his marital status, and whether or not he has been living with a family, the duration of residence, the status, whether they own the residence, his attitude, his physical condition, his previous history, whether he is on drugs or alcoholic, whether he is in any special program, whether he would like to participate in the drug program or alcoholic program, and whether he would like to participate in the educational program for high school equivalency, et cetera.

THE COURT: Do you have any information as to the extent to which the people who are in the Tombs are asked those questions when they come in there?

THE WITNESS: They have some information but it had very little to do with the problems. They have at one time set up a man to be in the receiving area who-- I forget the exact title they give to him but he was more or less of a social worker-- to try to help the inmates with the problems they might have on admittance and resolve them, but when I asked them, there wasn't anyone in the receiving room at the time we were there, so whether or not this was still continuing I couldn't say.

THE COURT: So you don't know what the present arrangements are?

THE WITNESS: No.

Q Mr. Anderson, after your interviewer fills out the form-

THE COURT: Would you care to offer that exhibit inevidence?

MR. HERMAN: Yes, your Honor.

THE COURT: Would you show it to counsel, please?

MR. KRANIS: Your Honor, for what purpose is this being offered into evidence?

THE COURT: It is what is considered by Mr. Anderson to be a proper standard of classification.

MR. KRANIS: Has Mr. Anderson indicated whether this is applied?

THE COURT: Yes, he said it has been developed by the Federal Bureau of Correction.

Where is that being used?

THE WITNESS: In Northumberland County Prison.

THE COURT: Is that a prison in thesense of a jail? Are the people in your institution convicts or awaiting trial?

THE WITNESS: Predominantly awaiting trial. Probably three-quarters of them are awaiting trial.

THE COURT: Thank you.

Well, gentlemen, you can comment on it later.

Let's continue with the questioning.

mpg 5 Anderson-direct

Q Mr. Anderson, after your interviewer completes the classification form, are people rated differently?

A Yes, sir. There's regular weights with the instructions that come with that. You add up the score, a "yes" answer or a "no" answer, and how long he has been in residence or on a job all have certain weight values, and by adding these up, it gives you a pretty good indication of what you can expect from the man while he is with you and what his chances are for these different things.

Q Are some people with you rated as maximum security people?

A Yes, sir.

Q Are some people with you rated as minimum security people?

A Yes.

Q And what is the effect of being put in a minimum security area?

A Basically they have less supervision. We do not have to check them as frequently. They -- at times they have more privileges, too.

Q What are some of the privileges which they would be allowed?

A Probably open visits.

Q What do you mean by open visits?

A A visit with a family in a setting similar to the way we are sitting right here instead of having a screen or something between you.

Now, I want to make it clear that you could not do this with everybody, and this is another reason why you need this classification so you can determine who would be eligible for this type of a visit.

MR. KRANIS: Your Honor, at this point may I ask if this document being offered into evidence as Plaintiff's Exhibit--

MR. HEYMAN: 2.

MR. KRANIS: -- 2, is a classification system or classification form used by the witness or are these being offered as forms used by the Federal Government?

THE COURT: It is offered as both.

MR. KRANIS: Because I have been advised by my associates that they do not believe that these documents are an exact replica of the documents used by the Federal Government.

THE COURT: Well, isn't that too bad? The witness said what he said, under oath. I don't know what you people know or don't know. You can cross-examine him.

MR. KRANIS: With that reservation I won't object.

THE COURT: I will accept it as being used by Mr. Anderson at his institution.

THE WITNESS: To make it clear, I am not sure they are using it at West Street, because I haven't been there in several years.

THE COURT: Plaintiff's Exhibit 2 for identification is received in evidence.

(Plaintiff's Exhibit 2 received in evidence.)

THE COURT: Gentlemen, I think this would be a good time to take a morning break.

MR. HERMAN: I have just one more question on this.

THE COURT: All right. Just one more question on direct examination.

Q Mr. Anderson, could you please make a general observation of the conditions at the Tombs that you saw a couple of weeks ago as compared with those the last time you saw them, prior to your retiring?

MR. KRANIS: Your Honor, that question has already been answered.

THE COURT: I think it has. I don't think we need to go into that again. I have a very clear view of what your feelings are as to the situation as it was the last time and the time before. Nobody is here for the purpose

renovated for the use of inmates for quiet games, reading, writing --

THE COURT: Mr. Machazol, I hate to interrupt you, but really I don't see that the witness' testimony as to what is happening in the future is relevant. I know as a practical matter, because you have acquainted us with that fact, and I am taking that into consideration in determining what weight to give testimony, to the fact that there is going to be change.

Q Mr. Anderson, you have testified to the classification system problems?

A Of inmates?

Q Yes.

A Yes, sir.

Q Are you completely familiar with the requisites of setting up such a classification system?

A No, sir, I'm not an expert in that.

Q Is it correct to say that your institution includes convicted persons, as well as detainees?

A That is correct.

Q DO those convicted people come to your institution initially or do they come from other institutions?

A They come directly to us generally.

Q Are they there for their entire term?

A Each one is considered on his own merit.

Q What kind of information do you receive concerning the background of a convicted person when he comes to your institution?

A Within a very short time we receive the FBI record and the State Police records. We have excellent cooperation from the area of police in relaying information to us about individuals and their background.

THE COURT: Do you get what the Federal officials get, a presentence report?

THE WITNESS: Thisis done, but that is not done, sir, until the man is before the judge and is ready for sentencing.

Q Do you receive a parole officer's report?

A We work very closely with them. They are in interviewing us and the inmates.

Q You are aware of what the parole people have to say about this particular convict?

A Yes, sir.

Q In other words, you have a pretty good set of background information about this person?

A Hopefully.

THE COURT: That is true of convicts. How about detainees?

THE WITNESS: This form that I show you does develop some information that is helpful to us.

THE COURT: That comes from interviewing the man himself?

THE WITNESS: That is right.

THE COURT: I take it you have no such equivalent as a presentence report or a parole report with regard to a detainee unless he has been before you before?

THE WITNESS: Most of them have been with us before.

THE COURT: I'm sorry to say, that is true.

Q Do you know what kind of background informtion is given to the personnel at our institution pertinent to detainees?

A I have seen your cards, the forms you fill out on admission.

Q What kind of official information comes in, sir?

A I'm not aware of that.

Q Is it likely to be less than that of a convicted inmate?

A I would not want to make a judgment on that because I'm not too clear.

Q Do you feel it would be proper to institute

a classification system without full information about the background?

A It is needed more so when you have no information about him than when you have information about him.

Q How is it possible to do so when you have no people to do it?

A You have people to do it; you have a social worker, do you not?

Q What about the people who are in there for a week or two?

A It only takes 15 minutes to interview these people and get this basic information.

Q 15 minutes?

A That is correct.

Q You feel, then, that the parole officer's record is not at all that important?

A I never made such a statement. I said we use it and we work with them very closely.

Q Do you know what a commitment order is?

A I sure do, because you can't accept anyone without one.

Q Do you think a commitment order plus a 15-minute interview would be sufficient information on which to base a classification system?

A That 15 minutes with the inmate and then you may have extensive time and phone calls and so forth to develop and get other information.

Q Are you aware that the American Correctional Association manual does not provide for classification for detainees?

A What is the date of your manual, sir? There are some changes coming up in that.

THE COURT: What was the last question, please?

MR. MACHAEL: 1971.

(Last question read.)

THE COURT: Do you know whether that is so or not?

THE WITNESS: Presently it does not. That is correct.

THE COURT: Is it proposed that it should?

THE WITNESS: I have heard considerable discussion about it.

and emotionally to make someone restrain himself and withdraw himself until such time until he knows he is going to get out. If, however, the schedule is erratic or up to administrative whim, then he can't really count on it, he can't have that constant expectation that he can get out in a bigger space.

Q In general, in the area of expectancy, is consistency on the part of the present administration important in general in all of the things they do?

A I think it is extremely important, and perhaps more important that it is usually recognized. The sense of trust does come out of a perception of consistency on the part of someone else, and I think unwittingly very often inconsistent policies can provoke more suspicion and mistrust in inmates than almost any other factor on the part of the prison staffs.

Q Dr. Kinzel, did you observe the noise level in general in the Tombs the two times you were there?

A I did.

Q How would you characterize it?

MR. KRANIS: Your Honor, if I may, I did not raise any objections to qualifying this witness as an expert in the area of psychiatry. I don't believe he has been qualified as an expert in the area of determin-

ining the levels of sound. And since he is testifying as an expert, I would object to this question.

THE COURT: Have you done any studies in relation to the psychiatric effects of noise?

THE WITNESS: In the last months I researched it in the library.

THE COURT: I will hear what the doctor has to say for whatever weight his testimony is to be given and s-bject to any cross-examination that you wish to bring out to show the limitations of his experience.

Q How would you characterize the noise level in the Tombs?

A Very high.

Q As a result of your reading in the field of psychiatry does noise level have any recognized psychiatric effect on people?

A Yes.

Q What?

A Taking the literature as a whole, the impression one gets is that the chief effect of noise is on concentration and irritability levels, that is, the louder the noise the poorer the concentration and the higher the irritability.

Q Have you observed the floor on which they have

mental treatment, mental cases in the Tombs?

A Yes.

Q Did you observe the conditions and the noise level on that floor?

A Yes.

Q How would you describe the noise level on that particular floor?

MR. KRANIS: Your Honor, my objection stands to this entire line of questioning?

THE COURT: Yes, it does.

Q Have you observed the general conditions and the noise level?

A Yes, the noise level is extremely loud.

THE COURT: You are not suggesting, are you, that it was louder than the other parts?

THE WITNESS: No, I am not.

THE COURT: It was loud considering the fact that it was a place for psychiatric treatment?

THE WITNESS: Yes.

THE COURT: I visited there last summer and my impression was that the actual amount of sound -- I take it it is on the same floor -- was considerably less than it was in the cell areas. Would you agree when you were there that was so?

other as more important.

Q Dr. Kinzel, have you observed the visiting booths in the Tombs?

A Yes.

Q Could you describe them for the Court?

THE COURT: I think they have been described for the record and I have seen them, so it is not necessary.

Q In your opinion what is the effect of having visits conducted in these booths in which there is no contact?

THE COURT: You mean the effect on the inmate?

MRS. SHAPIRO: Yes.

MR. KRANIS: I think that Dr. Kinzel has been qualified as an expert to talk about the effect of closeness on violent individuals, and I believe that this last question is going far afield from the area in which Dr. Kinzel has been qualified as an expert.

THE COURT: I believe Dr. Kinzel has been qualified as good a man as I could expect to find to give me an opinion on this subject, and that is because the world hasn't many people who have studied it. I recognize it is only an opinion and I would regard it in that light.

I would like to know what his opinion is.

A My impression of the visiting areas is very much like the carrot on the stick that is held in front of the person who quite can't attain it, that is, they must be extremely frustrated. The visitor is not able to touch the inmate, or vice versa.

The conditions are such that the pane of glass is the only way that there can be any visual contact and through the mechanical electrical device for any oratory contact. All the perception of the visitor is filtered through something.

Now, it turns out that one of the body image disturbances not uncommon in a group of inmates whether they be violent or non-violent is the sense that there is a barrier between them and other people, and they sometimes will actually describe things, like, "I feel like there is a piece of cellophane between me and someone else," or "There seems to be a kind of a haze."

What they are reporting really is a sense of a barrier between them and other people which they are constantly trying to bring down by very frequently in this group touching loved ones.

It would seem to me that any visiting area that does not permit that is really bringing the loved ones

so close and yet so far and is in a way seductively almost frustrating the inmate rather than gratifying his basid emotional needs.

The visiting areas that I have seen where there is the ability to hold the hand, to shake the hand, to have an arm around the shoulder, there is a great deal of feeling of well being, there is a great deal of feeling of them getting someth ing, and my impression is it does not lead to any kind of difficulty.

THE COURT: What locale or institution are you referring to?

THE WITNESS: Well, my experience was at the Springfield Medical Center.

THE COURT: Can you tell me what the arrangements are there?

THE WITNESS: Yes.

There was a large room, such as you would find in a recreational room, or perhaps a lobby of a hospital, let's say, where there were chairs, comfortable chairs and positioned in such a way that you could have a private conversation without someone right over your shoulder, as they are at the Tombs, where the next person can obviously hear what is ging On if he wants to and there is no sense of privacy.

There was no restriction on hand holding or arm around the other, and, really, no attempt at surveillance of any kind.

THE COURT: Do you have any idea what kind of security check occurred before the visitor arrived and when the visitor left?

THE WITNESS: None, simply that he was noted to be a relative.

THE COURT: Not searched in any way?

THE WITNESS: No.

Q Dr. Kinzel, when you are describibg the visiting in Springfield, do you know whether the inmates were searched before or after the visits ?

A I don't know whether they were searched. My impression was they were not.

MR. KRANIS: Your Honor, I would object to that last remark.

THE COURT: Well, you don't need to object to it. I won't regard an impression as evidence of anything.

THE WITNESS: I don't recall.

THE COURT: He says he seemed to believe there is no question that there was no search of the visitors and he admits he doesn't know as to the inmates.

Q Were pre-trial inmates allowed to use this visiting room?

A Yes.

Q In your opinion, Dr. Kinzel, does having two in a cell, the cells in the Tombs and the lack of contact visits and/or spaces that you observed in the Tombs, would that have an effect on the general security or the -- first, on the general security of the Tombs in terms of the chances of violence?

MR. KRANIS: I would object on the ground that the witness has not been qualified in the area of penal institution security.

THE COURT: I think you are drawing your distinctions too narrow. The objection is overruled. But you can continue to have an objection to this line of questioning.

A Yes, I would think it would increase the chances of violence.

Q Dr. Kinzel, in your opinion would there be any special danger in allowing a violent inmate to have a contact visit?

A I think it is a judgment that has to be arrived at through an evaluation of how violent the person is at any given time. Most violent people are in control

of themselves and without any unusual stresses on them can control themselves. But it is a judgment that should be made by a third party.

Q In your opinion should there be a blanket rule, for example, that if an inmate is violent he can never have a contact visit, or should it be made on a visit-to-visit basis?

A The assumption should be made that this man is not violent until it be proven otherwise.

THE COURT: If it has not been proven otherwise in March, his condition should be ruled on in April?

MRS. SHAPIRO: Yes.

THE COURT: In other words, can a person's level of violence change so that it might be inappropriate for him to have a contact visit this week, but not necessarily next week?

THE WITNESS: Yes. Not only does it change, but it changes rather rapidly compared to most behavior of prisoners. As a group violent prisoners are actually more changeable than the non-violent ones in terms of, at least, this aspect of their behavior.

Q Would contact visits be psychologically beneficial to violent inmates as well as to the average inmates?

A Yes.

THE COURT: Well, wouldn't there be some qualification to that, Doctor? Might there not be times when even to see your loved ones might be agitating?

THE WITNESS: The situation which comes up occasionally, which is the loved one that comes and says "I don't want to be your loved one any more," the "Dear John" situation, which is upsetting--

THE COURT: What about situations with relatives with whom you have had strained relations over the years? A mother comes disapproving of your being in the institution. I suppose you don't have to see her.

THE WITNESS: Yes, but also by and large because of the psychodynamics of prisoners, they very much value their loved ones.

THE COURT: I suppose so.

THE WITNESS: Way beyond anyone else.

THE COURT: You mean more than non-prisoners do feel?

THE WITNESS: Yes.

THE COURT: Well, we all appreciate most the things we can't have, I guess.

but to protect themselves.

Q Dr. Kinzel, in your experience could the potential for violence of an inmate be classified according to the crime with which he is charged? In other words, could a classification system for violent inmates be made up according to the crime for which they are charged?

A No.

Q Dr. Kinzel, what in your opinion --

THE COURT: Well, wouldn't that be a factor? I mean, I can understand that if you murder somebody, that might be a crime of passion, that it can be committed under terrible stress, infidelity or whatever it might be. On the other hand, if you had a person before you who had been convicted of knifing somebody five times, wouldn't that be an indication of violence?

THE WITNESS: Yes. On the other hand, some of the violent men were involved in property offenses and had one violent incident. That alone is not enough.

Q Dr. Kinzel, can you describe what you think would be necessary as a procedure, as a classification procedure for determining which inmates are violent and which ones are not violent?

A Well, the essentials of the proceure would have to involve someone with some kind of professional competence

interviewing and getting a history. This is the chief thing. And most -- this is effective in most of the situations.

THE COURT: You say a professional person. Does that mean it has to be a psychiatrist, or could, for example a clinical psychologist do it?

THE WITNESS: I would think a clinical psychologist would be able to.

Q Do you think that such a screening procedure could be used in a detention facility?

A Yes.

Q Would any battery of pscyhological tests or anything like that be necessary?

A Psychological tests are predominantly good for diagnosing the inner emotional state of a person, and they are not good predictors of behavior. Really, the best predictor of behavior is the history.

Q Dr. Kinzel, if an inmate is potentially suicidal, is it advisable or inadvisable to place him in a cell with one or more other people?

A I would say it is inadvisable to place him in a cell with another person.

Q If he is potentially suicidal?

A Yes.

THE WITNESS: I have visited two others besides Springfield. Sing Sing and --

THE COURT: What time did you spend at Sing Sing? Just a one-day visit?

THE WITNESS: Yes. And I spent three days at Terre Haute, Indiana.

THE COURT: You said you spent two years at Springfield?

THE WITNESS: Yes.

THE COURT: So you don't want to venture an opinion on the effect of noise on the guards?

THE WITNESS: I think it would be distressing to the staff, but I really don't know what the specific effect would be.

THE COURT: Let's put it this way:

I don't want to call on you to testify as an expert on anything that you don't know anything about, but what would you think would be the influence on anybody who is working there, a perfectly normal, healthy person working there?

THE WITNESS: I think it would be tremendously irritating. As a matter of fact, a couple of us, just arter visiting a short time, had terrible headaches.

MRS. SHAPIRO: I have no further qustions.

I don't know. But I just wanted to get it straight in my own mind.

Q Dr. Kinzel, to the best of your knowledge do local Federal detention institutions -- I believe there are two detention facilities in the United States, one in New York City on West Street, and one, I believe, out in Arizona -- do you know whether these detention facilities were equipped to compile a series of reports with respect to a detention inmate comparable to the reports filed by the United States Office of Probation with regard to pre-sentencing an inmate?

A Would you repeat the question?

THE COURT: Unless you want to follow that with a question that depends on the Doctor's expertise.

MR. KRANIS: What I would like to point out or what I would like to find out is whether or not Dr. Kinzel could have made the same evaluation with respect to detention inmates without the voluminous studies he had available to him with respect to convicted but unsentenced inmates or convicted and sentenced inmates.

THE WITNESS: I think I can answer.

THE COURT: Go ahead and answer, because I don't understand the question.

A Most of the history of repeated violent behavior

came from the direct interview of the inmate. , Unfortunately, eople being what they are, amazingly enough, 40 questions were often asked by the inmate by the classification officer, except the question, "Did you ever kill anyone?" or the question, "Have you ever assaulted anyone?"

So that I found in my brief and limited study that the reliability of voluminous records regarding the incidents of violent behavior was not too good, and the direct interview was much superior.

THE COURT: But just to be sure we understand how the system works for whatever purpose the City may wish to use it as a comparison to its own system, in the Federal system, as I understand it, if a person is accused of crime and detained but has never committed a crime before, there would be no particular information about him in the Federal Government file; if he has been convicted before, there may be a rap sheet, as it is called, which indicates the crimes he has committed, or if he has actually been sentenced, there would be a pre-sentence report from the previous conviction, and that that information would be made available to you if it exited.

On the other hand, what I understand you to say is really all the information you used was the information

which the Springfield people collected either by the classification officer interviewing the man or the doctor interviewing the man? Is that right?

THE WITNESS: Yes.

Q Now, Doctor, I would ask you this:

In your opinion could the New York City Correctional facility, the ManhattanHouse of Detention for men, be equipped to conduct an adequate study to arrive at the conclusions that you arrived at in so far as classifying inmates?

A You are referring to the classification of violent and non-violent?

Q Yes, to the classification study or the buffer zone study that you conducted at Springfield, would an ordinary institution which is not a United States medical hospital center be equipped or could an ordinary institution be equipped to conduct such a study, and, if so, how?

A Yes, very simply. I think I have mentioned it before. A limited trained number of personnel to interview inmates and have someone available to research whatever information is to be obtainable in a short period of time.

Q What would be the training such an individual would have to have?

A I think an individual would have to have some general background in psychology or in psychiatry or in medicine. I think that there would have to be some sophistication in the area of what is coming in in increasing knowledge these days, what we know about violent people, which is increasingly more and more. I think one would have to be trained sufficiently to judge whether or not someone was feigning or not feigning, and i think --

THE COURT: Feigning, you say?

THE WITNESS: Feigning, yes.

I think, like anyhting else, such a staff, the making of such a judgment, would be only as good as its leadership, and I think it should have professional leadership.

Q Do you know of any Correctional facility in the United States which has such a staff?

A Designed just to evaluate dangerousness?

Q Yes.

A Well, the institution for sexual offenders in Massachusetts, the one I mentioned, Bridgewater. It is a branch of Bridgewater. I believe it does have a staff trained to evaluate dangerousness.

Q Is that the only one?

A That is the one that I know exclusively for that

purpose.

Q Now, is the Massachusetts facility a detention facility or a facility for sentenced inmates?

A I don't know.

Q Do you know the population?

A No, I don't.

Q Do you know the size of the staff?

A No, I only know the reported study.

Q Where would the reported study be found?

A I don't know the reference. I will be happy to get it for you.

THE COURT: Doctor, under New York law most classes of persons can be sent to Matteawan or Dannemora State Hospitals only if they are found by a jury to be dangerous, juries picked in the same way that ordinary juries are picked.

In your opinion would it be more or less likely that a group of people such as you described would be able to evaluate dangerousness better than a lay jury?

THE WITNESS: In my opinion the more one is trained in expertise to recognize signs and symptoms of dangerousness, the more accurate he would be.

THE COURT: The group trained as you described would be more accurate than a jury?

THE WITNESS: Yes.

Q Dr. Kinzel, do you know how long it would take to adequately evaluate an inmate before properly classsifying him?

A Well, if I was to design a system -- because I don't think it really exists at this point -- I would have a screening interview which could take a half an hour, and suspecting someoone of being more violently predisposed, I would then evaluate him more thoroughly.

Q How long would it take before a final report were ready?

A I would say about three weeks.

Q Dr. Kinzel, would you know whether the population of a sentenced institution, a prison, a penitentiary, would be a rather stable population? Would you say the population of a sentenced facility would be a stable population?

THE COURT: Well, it is relatively stable. There is a turnover there, too.

MR. KRANIS: Over a period of a year, for example.

THE COURT: People come and go all the time when terms expire, and new people come in, but not as quickly as in a detention facility.

THE COURT: In any event I assume you still conclude from what you have learned about the psychiatric reaction to space requirements, that the normal individual and the violence-prone individual would still want to have as much space to himself as one cell in the Tombs?

THE WITNESS: Absolutely.

THE COURT: The second subject that you testified about had to do, I recall, with visiting, the visiting situation and of course that isn't affected by this treatment question.

All right.

Q Dr. Kinzel, you indicated that based on your observations, the noise level in the psychiatric ward was too high for adequate treatment.

Would your conclusion as to the adequacy of the treatment that the institution can afford be any different if the institution were to reduce the population of the psychiatric ward to 75 per cent of the current capacity?

THE COURT: You mean by 25 per cent of its present population?

MR. KRANIS: Yes.

A Would the noise level go down? Is that what you are asking?

Q Would the noise level go down and would the

adequacy of the treatment be increased because the noise level went down and the number of inmates were less?

A My impression as a non-architect is that it is the kind of building that you could drop a penny in and be the only person in the place and it would make a racket, because the sound bounces off --

THE COURT: So insofar as you are capable of reaching a conclusion, you don't think it would necessarily solve the problem just to take some people out?

THE WITNESS: That is correct.

Q Just a few more general questions.

Dr. Kinzel, before reaching any of your conclusions, did you consider security reasons or the security function of the institution?

A Which conclusions are you referring to?

Q Conclusions to the adequacy of the psychiatric ward, conclusions to the adequacy of the visiting procedures, conclusions as to the adequacy of the size of the cells.

A I didn't study the security aspect of the House of Detention, if that is what you mean.

Q Now, Dr. Kinzel, have you ever worked out a system to determine who would be acceptable for face-to-face visits? By who, I mean which inmates might be acceptable for face-to-face visits.

Q I might ask that, how much weight would you give to that factor?

A You can solve both by staying two arms' lengths away.

Q Would there be a number of factors that an institutional supervisor would have to take into consideration in his treatment of an inmate?

THE COURT: Suicidal inmate?

MR. KRANIS: Inmates in general.

THE COURT: I am prepared to accept that, too, Mr. Kranis. I don't think that is anything that we need an expert on. Of course he has to consider a lot of things. This witness is here for the purpose of shedding light on something he knows that the rest of us don't.

Q I got one or two general questions.

Dr. Kinzel, you indicated that within a half hour visiting the institution you got a headache apparently because of the noise level?

A Yes.

Q Might this have to do with your inexperience in this institution and might someone that had been there on a daily basis be able to withstand the headache problems?

A You mean without developing an immunity to the

sound? Yes, but not without paying the price, and the price would be a kind of deafness to the noise around you, and that includes the human noises. I am not sure, for instance, whether a scream could be differentiated from a clash of a pan or something. In other words, you lose your capacity to differentiate types of noises.

Q Have you studied this problem and reached that conclusion?

A What?

Q Have you studied that problem and reached that conclusion?

A No.

THE COURT: Then there is no point in asking the question.

MR. KRAUT: No.

Q Would you say that it is true that any form of incarceration might aggravate a psychiatric condition?

A It could.

Q Dr. Kinzel. could you consider the change in scenery in so far as the present procedures in the institution are concerned, having a man come out of his cell several times a day to go to the lockout area, having a man participate in programs, church services, movies, probably some recreational activities, would that reduce

adequacy of the treatment be increased because the noise level went down and the number of inmates were less?

A My impression as a non-architect is that it is the kind of building that you could drop a penny in and be the only person in the place and it would make a racket, because the sound bounces off

THE COURT: So insofar as you are capable of reaching a conclusion, you don't think it would necessarily solve the problem just to take some people out?

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Q Conclusions to the adequacy of the psychiatric ward, conclusions to the adequacy of the visiting procedures, conclusions as to the adequacy of the size of the cells.

A I didn't study the security aspect of the House of Detention, if that is what you mean.

Q Now, Dr. Kinzel, have you ever worked out a system to determine who would be acceptable for face-to-face visits? By who, I mean which inmates might be acceptable for face-to-face visits.

mpg 6 Kinzel-cross

A I think I will start with the assumption that they were all acceptable for face-to-face visits, and then decide whether, if one was deemed this or that, maybe there should be some restraint put in, but I start with the assumption that they should all be --

THE COURT: That may be all very well but it doesn't mean that the measurement process is different whether you start from the assumption that everybody is okay or everybody is bad. You have to start with the assumption.

I take it you have not actually created such a system?

THE WITNESS: That is correct.

THE COURT: The next question I would like to ask is, do you think it is feasible to construct such a system with any reasonable degree of accuracy?

THE WITNESS: Yes, I think actually most inmates that are too much upset for a visitor know it.

THE COURT: Well, it is not only the question of concern about violence or emotion. At the Tombs I think it is perfectly obvious that the concern is security, whether contraband will be brought in, whether contraband might consist of basically two types, narcotics or weapons.

Do you have any opinion as to whether it is

feasible from a psychiatric point of view to work out any system which would minimize or end up with no more than a minimal risk of contraband and weapons being brought in because of body contacts?

THE WITNESS: It is a problem at any area. I have sometimes wondered whether or not the level of contraband is not a rather even thing no matter what you do with visitors and what you do with security. I think all of us are aware that in the most secure places you have what seems to be a rather level amount of contraband being possessed, and I think in the least secure institutions you have a level.

My impression, unstudied, is that these levels are not too different and that they probably do not depend one on another, that is, if contraband is going to come in, it is going to come in whether you allow somebody to touch a visitor or not.

THE COURT: Like the problem of narcotics coming into the country at large. Have you studied this?

THE WITNESS: I have not.

THE COURT: Maybe if guards sold narcotics to the visitors, you could drive down the price of narcotics by bringing it in otherwise.

I hope that both the public and the Court of

Appeals realize that the last sentence of mine was altogether facetious.

Q Dr. Kinzel, would you care to opine as to whether or not it is feasible to have a face-to-face visitation system in an institution such as the Manhattan House of Detention without security checks?

A My impression is that it would be feasible.

Q And you don't foresee any security problems as a result of that?

A I would foresee the same amount-- my impression is, you would have the same amount of security problems as you have at the moment.

Q Dr. Kinzel, with respect to contact or face-to-face visits, before, I believe, his Honor had related certain problems which might arise, for example, an inmate receiving a visit from a relative with whom he does not have the best of relations, or possibly learning of some unfortunate incident.

Is it also possible that individuals, individual inmates might turn out to be a good deal more frustrated after having a face-to-face visit and seeing his visitor leave the institution and knowing that he is not going to see that visitor for some length of time, can't have any physical contact with that visitor?

THE COURT: Do you mean he would be more frustrated if there were a contact visit than there would be from the present type of visit?

MR. KRANIS: Yes.

A My impression is that the visit, especially the contact visit, is gratifying, it is not frustrating.

THE COURT: You don't think it would be less frustrating than the present type of visit? I think that is the question.

THE WITNESS: Infinitely more gratifying than the present system.

Q Would it be more frustrating than the present

system in the sense that you're taking something away that was even closer and that that might make the inmate feel more locked up having gone through this experience?

A No, that is not my impression. That is from hearing a lot of inmates talking about visits, they come away not feeling deprived or wishing to escape or go home, they feel comforted and relaxed and more sure. I think I mentioned as a group psychologically they often place a very important emotional value on one person, so that seeing that person is not a frustrating thing, it is a ratification.

Q My question is, assuming for argument's sake for one moment there is such frustration, would the violent inmate be cause to react even more violently having suffered this frustration?

A The few times this happens -- and it is very rare -- my impression is that it actually leads more to a suicide attempt rather than a violent incident against someone else. I am reminded of a man who didn't realize that his daughter, his young child was going to be brought to visit him, and he thought that the daughter didn't know that he was in prison.

Now, this man had probably the most violent history of any man that I studied, and following that he

was extremely suicidal, but it was simply because of the sense of shame of the child seeing him in prison. Now, that led to distress, but not of a violent nature toward others. It was more towards himself, which, by the way, passed.

Q With respect to suicidal inmates, Dr. Kinzel, I believe that you indicated previously that you felt some suicidal inmates should not be left alone?

A That is correct.

Q And I also believe that you indicated that suicidal inmates should be under observation within arms' reach?

A Ideally, yes.

Q How would this jibe with a suicidal inmate who happens to be extremely violent in your buffer zone theory?

A If you mean if you got too close?

Q Yes.

A Then you shouldn't; maybe you should be within two arms' reach.

Q If you had to balance the effects, if you had to worry on the one hand as to your buffer zone theory and the more violent inmate might become more violent by closeness, and your problem as to suicide and having

REDIRECT EXAMINATION

BY MRS. SHAPIRO:

Q Dr. Kinzel, could you state in your opinion what the importance of contact visits is? I would like to relate it in terms of other things, such as recreation, or getting off the floor once a day?

In the scale of things in the prison how important is it?

A I think it is one of the most important aspects of management and helping prisoners, whether you call it treatment or not, and I think it is underestimated, and I think the importance of -- what I have tried to express in my testimony -- the importance of actual touch is probably more important than we recognize.

MRS. SHAPIRO: Thank you.

THE COURT: Well, thank you, Doctor. You have been very patient and have become an expert on a lot of things you weren't expert on before you came here.

(Witness excused.)

THE COURT: May I see counsel in the robing room.

(Discussion in the robing room off the record.)

(An adjournment was taken to November 15, 1972, at 10.00 o'clock a.m.)

Q How about the reverse of that?

A Could you by classification discover people who are more aggressive and more dangerous?

A Yes, that could also be possible. With the system at present-- not just possibly more aggressive and dangerous, but with the system at present, there are people -- and I can't estimate at this time -but I think there are a number of people coming in who are not noticed to be mentally ill who really are. They are the people who are usually missed. They are the quiet ones who sit inside their own head quietly.

THE COURT: In other words, you don't know who might have come through there who should have been sent up?

THE WITNESS: Right.

Q Do you endeavor to maintain any classification system within the 10th floor?

A Yes, we do. We have devised a system-- we have a system which classifies people who are more severely ill to the point where we feel they are ready to go back to the general population. It is a rating of 1 to 5. So far it seems to have worked out fairly well. We have housed people in areas according to their classification and it also seems to provide some minimal incentive for

THE WITNESS: I hadn't thought of it that way.

THE COURT: I hadn't either.

THE WITNESS: I am not sure how feasible that would be; just in my general impression of how well people pick up reading material. I think it would be of great variability, because some people will take in what they read and a lot of people do not.

THE COURT: Some people can't do anything else.

THE WITNESS: Yes. We have had some very loose talk about it at this time, preliminary talks about possibly having some mental health put into the training programs.

THE COURT: Of course, that would be much better.

Q Dr. Teich, were you working in the Tombs last summer?

A The summer of 1972, yes.

Q And are there any particular problems that arise in the summer?

A I must say our team sat down and considered coming in in bathing suits at times because of the heat. Yes, it is very difficult to work there. I don't think summer is a special season because each season up until now has its own difficulties in terms of the temperature there.

Q Will you describe that, please?

A Well, for instance, in our interview room, the former barber shop, there is a radiator. Now, I imagine before we had plexiglass put up there was no problem because it would filter out to the rest of the hall. But now it is enclosed and it becomes boiling hot in there, because the heat is turned on.

Q Can the heat be turned off?

A THere is no valve on the radiator. I don't think there are any valves throughout the institution. The warden can't regulate his own radiator. We have discussed possibly correcting that.

Q Are there any particular problems relating to a season?

A Well, during August there was a particular problem. As I remember, we were most crowded during August and there was a lot of increased turmoil, I would say, on our unit, and part of that had to do with the fact that the Courts were slowed down and mostly closed down during that time or it was a slower season and people were staying in there longer periods of time.

Q How --

A Well, it was very hot at the time, but they would also be in there a longer time. And I remember one

Q Are there specific instances?

A Again specifically -- there was one fellow who was particularly close to his family and had a lot of difficulty in supporting his family and his crime was connected with that, and he needed- he had threatened or told us a number of times that he needed to see his wife. We wanted to transfer him to Rikers Island Hospital because he was fairly ill and he said he couldn't do that. He needed to be in a place where he could have contact with his family and his wife and see her, and he would go down to the booths and come up even worse than when he went down because of the separation.

He wasn't able to see her in any meaningful way in that booth. And we felt that a family visit was really important for him. It was important enough for us to go over the severity of his illness in order to keep him in the institution.

Q Dr. Teich, are there transparent windows on the 10th floor?

A No, there are not.

Q Is there any way that the inmates can see the outside?

A No, sir, there is not.

Q Do you feel this has any effect upon them?

A Yes, I do. It is my opinion that a number of people who have been there a long time or a moderately long time, they have expressed to me and have become pretty much disoriented as to what goes on outside. People begin losing orientation as to what season it is. Frequently on a day like this morning it is hard to tell whether it is really day time out or night time because the light doesn't get through the windows there. They really have no contact with what the normal life is outside.

I think one thing we have learned in mental health in the past few years is that in trying to treat people and orient them to society, it is not helpful to lock them up away from society and that the more contact they have with society in general the better chances there are for being able to treat their illness and bring them back to society.

Here they are being kept from any kind of visual view. It takes away from their incentive to try to return outside and forces them more into dealing wit' 'iving with and looking at what it is like living in t i- tutions.

Q Dr. Teich, in your professional opinion, have the conditions in the Tombs ever brought about mental illness in detainees who subsequently became your patients?

A I think there is no doubt about that. The most dangerous time-- and we are all at least in our institution aware of that now is during the first couple of days particularly for people who have not been in an institution before. Somebody who is locked up for the first time, comes into an environment where he is suddenly taken-- has his freedom taken from him, has his ability to control his own life taken from him and is faced with, at least in his mind in our institution, the uncertainty of not knowing what is going to happen to him and feels very little control over that; there is a great feeling of depression that occurs during the first period of time, the first three to five days, and that is the time of high suicide risk, and a number of people have at least attempted suicide although in our institution, in my experience, nobody has committed suicide, been successful, during this period of time.

One of the suicides that did occur was, again, during the first week of his experience in the institution, but I don't think that was particularly a case of his being locked up that was the overriding factor in his suicide.

Q Can you please tell us of any specific occasions you have treated people who have been in the Tombs longer

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And our reconstruction of the situation is that is how Mr. Wing was at the time he was seen for the second evaluation, it was such that without any prior information one very easily could make a judgment that he would be capable of going into the general population.

He was placed in the general population and hung himself the next day.

Q Dr. Teich, are there many suicide attempts in the Tombs?

A When I first came there were. I think they have decreased significantly since then.

THE COURT: Can you give me an idea of what figures you are talking about?

THE WITNESS: Well, I can remember in the first month I was there that we were running a rate of cut-ups. I think there has to be a differentiation between real suicide attempts and gestures, but just talking about all things that could be taken as attempts at suicide; fellows who cut their arms and that sort of thing. We ran two a day and now it is my opinion that one or two a week is the maximum. Particularly on our floor we had had a large number of people doing that initially and it doesn't occur any more.

I think that is partly due to our policy of no

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longer permitting people to have mental observation just because they cut their arms. Frequently it is used as a manipulation to get to our floor where they are more able to get medication. I think that is something about what it is like to be in the institutuion.

The reason people, the inmates want medication is that it helps them, some of the medications help them get high. Helps them go to sleep, blocks out the environment they are in,and they are willing to mutilate themselves in order to obtain that. It is preferable.

Q Dr. Teich, in your judgment could Mr. Wing's suicide have been avoided if he had been taken directly to the 10th floor?

A I think so.

Q Could Mr. McCullem's suicide have been avoided if he had not been transferred off the 10th floor?

A Yes, I believe so.

THE COURT: Mr. Berger, are you getting to the end of your questioning? If not, let's take a break now.

MR. BERGER: I am fairly near the end, but it would be more than five or ten minutes.

THE COURT: All right. Let's take a short break.

(Recess.)

whole floor can't go, they don't get to see movies.

Q Are they able to go to the roof at the moment, like today?

A Today they would not be.

Q Why is that?

A Because of the weather. The roof--

THE COURT: Well, that is not a question of their being --

THE WITNESS: No.

Q Do you feel that the extent of recreation in the Tombs has any effect upon your patients?

A I think so. In the treatment programs I have been involved with, before I came to the Tombs, there was always a large emphasis on recreation or some type of occupational therapy, activity, therapy.

THE COURT: Are you referring to other institutions?

THE WITNESS: Yes.

THE COURT: Will you give me a little history of what experience you have had in other institutions and what you are talking about?

THE WITNESS: During my residency I was working in Kings County Hospital in the G building there, which is the psychiatric hospital, which I must say while I was there wasn't that much different from prison in that people were

locked in, in much the same way. They would have the regular ongoing recreational program at least three times a week. They would have the availability of painting material to do some kind of what is called occupational therapy and various other forms of being able to do handcrafts and work with kilns there, and even go on field trips at times.

It was a different institution. But they did have a lot of things that they could do during the day time which could make their time much more productive rather than sitting around.

On our more active treatment floors, in fact, we emphasize this and try to prevent people from just sitting and watching television or just sitting and playing cards. That was not considered adequate for therapy.

Q Dr. Teich, have you ever seen the family visiting booths in the Tombs?

A Yes, I have.

Q Are your patients permitted to have visits in those booths?

A Yes, they are.

Q In your opinion, does having visits in those booths have any effect upon the illness of your patients?

A Well, I can't say anything about that generally.

Q Are there specific instances?

A Again specifically -- there was one fellow who was particularly close to his family and had a lot of difficulty in supporting his family and his crime was connected with that, and he needed- he had threatened or told us a number of times that he needed to see his wife. We wanted to transfer him to Rikers Island Hospital because he was fairly ill and he said he couldn't do that. He needed to be in a place where he could have contact with his family and his wife and see her, and he would go down to the booths and come up even worse than when he went down because of the separation.

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A No, there are not.

Q Is there any way that the inmates can see the outside?

A No, sir, there is not.

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The objection is overruled.

Of course, you are not supposed to ask leading questions. You know that.

MR. BERGER: It was just for clarification.

A They don't seem to be aware of it or they don't seem to follow it.

Q Now, have you ever complained about this problem to the warden?

A Well, we have discussed it with the warden and he is in accord with us that this should not happen but we haven't been able to really pinpoint where it comes from and why it happens, yet.

Q To your knowledge, has the warden put out orders to the staff not to transfer people?

A Yes, he has.

Q Have these orders been followed?

A Well, the transfers continue to be made.

THE COURT: From your unit or to your unit or both?

THE WITNESS: No. This is within the unit.

THE COURT: I see. To cells, you mean, or what?

THE WITNESS: Right.

Q Do you regularly consult with the warden about problems on your floor?

psychotic, as he has, and we have been waging a major fight to keep him sane enough to stand trial.

Q Dr. Teich, do you feel that the size of your staff is adequate?

A No.

Q Would you prefer to have more staff assigned to your unit?

A We most certainly would. The problem, though, and one of the reasons that we have not moved ahead on that, or put pressure on it at this point, is there is no place for them to work.

Q How does your staff react to the working conditions in the Tombs?

A Well, as an example of that, yesterday I set up a sensitivity group for our staff, because we have been encountering such increasing tensions among the staff itself becuse of the conditions and kinds of frustrations we experience there, that we have to go and try to put ourselves back together.

I think this is evident with the Corrections officers also. They have been experiencing also a lot of difficulty. We have been finding that much of their frustrations have been coming out directly on us when we have had a fairly good working relationship with

them. Two officers who have been on full time have demanded they be taken off the floor because they couldn't take it any more, they were afraid they would crack up.

THE COURT: Are these factors distinctly different in your opinion from the experience of people who work in other mental hospitals? In other words, are they characteristics of the work as well as of the physical conditions?

THE WITNESS: Well, in my experience I don't remember that happening in a mental hospital. I think the conditions there really make the difference.

THE COURT: It is a tough job.

THE WITNESS: A tremendously difficult job, and not only that, they are also short staffed, and each of the individuals is overloaded in what he has to do. I can understand that, again, as I said before, people in Corrections are undergoing change in having to deal with us, that we deal with problems somewhat differently than they have been trained, and that is also difficult for them to handle, because they feel it is their responsibility, what happens to the inmates, and it is hard for them to accept doing things differently than they feel they should.

They are afraid that something will happen to

then if things go wrong. So there are a lot of pressures on Corrections people and there are a lot of pressures on our staff, too.

As I said before, in describing mental health workers, they really haven't had very much training, and though they are certainly better than they were two or three months ago, they have also come through the institution, come through programs and want to see things happen, and they don't happen very fast.

There are a lot of frustrations with your being able to help people, and other kinds of frustrations. They get involved with someone they are setting up in a social service way and he disappears. He goes to court some day when he doesn't expect something to happen and never returns, and we don't know what happens to him. There is no information fed back and there is no way to follow people like that. It is very frustrating to our staff to put effort into some thing, have it half done, and then have it taken away.

Q Dr. Teich, you testified about being unable to treat mentally ill people in the Tombs. Do you feel that you were able, at least, to take care of mentally ill people in the Tombs?

A I am not sure of the distinction between those

Q So that this would occur in a normal hospital, might occur in a normal hospital?

A It might occur in a civilian hospital. Let's not say a normal hospital. It would never occur in a private hospital where somebody was paying a lot of money.

Q Dr. Teich,I believe you testified that you thought there was a morale problem among the staff, Correctional staff, of the institution. Is that correct?

A Yes.

Q Is it possible that this morale problem may have been caused in part by shortage of staff?

A Yes.

Q Are you aware of the fact that within the past ten days or two weeks the Department has filled all vacancies on the staff?

MR. BERGER: Objection.

THE COURT: Put it this way: In your opinion would the morale problem improve if there were more staff?

And then you can prove to me there is going to be more staff some time.

Q Doctor, if all vacancies on staff were filled would that help reduce the morale problem?

A I think it would take one of the factors away

that created it.

Q Is it also possible that some of the morale problem among the staff might have been caused by such problems as negotiations of a union contract with the City of New York?

THE COURT: Do you feel you can answer that question?

THE WITNESS: No. I have heard nothing about that, your Honor. I cannot answer that.

Q Is it possible that some of the factors leading to what you label a morale problem might be caused by factors which arose outside of the institution?

A These are all possible. All I can -- I really can't answer that because I don't know very much about it.

I can respond to the things that I have gotten form the Correction officers that have formed my opinion as to at least what I estimate is the major cause and that is the kinds of conditions they work under. Indeed the short staff problem contributed to a good extent because they would be forced to work double shifts and working a double shift is intolerable in that place.

At least to a certain extent the officers are relieved after four hours and can get out of the environment

of the noise they work in, the constant tension of battle with the inmates, and go down and have coffee, but sometimes unless they are relieved they can't leave their posts. They are locked in just as much as the inmates are and they are aware of that.

They live in a constant state of anxiety that something is going to jump off and they will be trapped in there and won't be able to get out, and that anxiety is in my opinion the overriding thing that causes that.

THE COURT: You said constant state of anxiety. About what?

THE WITNESS: That there will be a riot, plain and simple.

Q In your opinion has this anxiety been caused at least in part by the riot at the institution two years ago?

A Certainly.

THE COURT: I take judicial notice of that.

Q Would you think that any Correction officer in any institution who has experienced a riot condition where possibly some of his brethren have had their lives threatened, would have those same anxieties?

A I would imagine anybody coming into those conditions would experience that.

But there are a number of things that exist in the Tombs. I can say that. I don't know other facilities. I only know that in the Tombs it does exist and that the other conditions that exist there add tremendously to the kind of anxiety they experience.

Q You mentioned earlier that there was a suicide prevention program at the institution.

Would you elaborate on that?

THE COURT: May I intervene for a moment? I would like to get a sense of time about this proposition.

I would ordinarly break for lunch at this time.

THE WITNESS: I do have an appointment that I do have to make. I could come back another time.

THE COURT: What time is your appointment?

THE WITNESS: One o'clock.

THE COURT: Do you think you would be concluded by then?

MR. KRANIS: No.

This is the second time in two days that this has happened to me. It is a problem. Yesterday I substantially finished the cross-examination of Dr. Kinzel, but the plaintiffs are putting witnesses on and they are going through their examination, direct examination, I believe. Mr. Berger had two hours, I believe.

MR. HARRIS: I object. I object to the witness relating what visitors have said to him.

THE COURT: I will disregard it. I will disregard it only because it is hearsay.

Q Would the security drawbacks in using the stairs outweigh the security benefits that may be gained by giving the men some time away from their cells?

A If there were areas that could be used on a proximate floor, I would think that definitely it would be desirable to move.

Q In your professional judgement --

THE COURT: Do you have in mind, for example, the possibility of having a dining room and a day room area on a middle floor?

THE WITNESS: On every other floor.

THE COURT: Then two floors could use it?

THE WITNESS: Yes. You could feed into it.

Q In your professional judgement, how much outdoor exercise should a detainee receive?

A A minimum of one hour a day. However, I don't think that you can isolate recreation and exercise from the rest of the activities. If there is a dearth of activity in things to do then I think the amount of recreation time should be increased. All efforts must be made to break up the tedium

and monotony which is inherent in a correctional setting.

Q In your judgement, even if other indoor activities were provided, would you still believe that one hour a day of outdoor exercise is necessary?

A If there is any way possible to do it there should be a minimum of one hour a day outside.

Q Are there any established standards on that?

A I believe there are. I believe that they are in the American Correctional Association manual of correctional standards. I believe they are used in the United Nations standards too, but I'm not sure.

THE COURT: I assume that counsel will bring to my attention anything that is contained in those standards if there is something.

MR. BERGER: Of course, your Honor.

Q Mr. Goff, you have seen the windows in the Tombs, have you not?

A Yes, sir.

Q Do you know of any policy reason, in your professional judgement, why the Tombs could not have transparent windows, more of them, than they do have?

A The basic reason for having frosted windows in institutions is to provide privacy both ways, namely privacy into the institution and privacy for any of the surrounding

environment, any houses, so that the inmates cannot look down into other housing units.

In my estimation, any facility which can have open windows, clear windows, without violating a privacy factor, should so do.

Again, we are trying to break down the confinement aspect, and if a person can look out the window and see a clear blue sky so much the better.

THE COURT: Are you implying that that could be done in the setting that the Tombs is located in?

THE WITNESS: I believe it possibly could be done on the upper floors. I'm not cognizant of any housing down below.

THE COURT: I don't believe there is any. In the sense of residence there is no housing at all, is there?

THE WITNESS: I would want to take --

MR. KRANIS: For purposes of clarifying the record, at the very least, just off White Street there are residences.

THE COURT: Yes. In that back part.

THE WITNESS: The privacy would go the other way too, and that is you would not want people walking down the street to be able to look into the cells.

THE COURT: I understand that.

MR. BERGER: I believe most of those buildings -- I don't know if they are dwellings or not -- they are three or four stories at most.

THE COURT: Do you see any reduction in security by the use of clear windows? I have no idea what the mechanics or technique is, whether clear glass can be made sufficiently thick to prevent security problems.

THE WITNESS: It can be.

As a matter of fact, most of your centers, most of your control units, where the offices are stationed, are quite secure. They are made with glass, so that they do have vision, so that they can see down. In other words, there is glass that can be used for this.

THE COURT: Which would be proof against, let us say, an attempt to break it by using a piece of metal?

THE WITNESS: It would be just as breakable or unbreakable as the frosting is. The frosting is not the principle factor.

THE COURT: I didn't think the frosting was, but I was under the impression that the present so-called windows were glass brick, which might be thicker. Maybe I am wrong.

Q Are there any established correctional standards for the provision of clothing?

A It is desirable to issue individuals clothing if

level. Even the question of restricted diet in terms of accepted practice, restricted diets are not considered as accepted punishment.

Q Did you visit the Tombs at all last summer?

A You mean just this past summer?

Q Yes.

A Yes.

Q How would you describe the heat level on the day you visited it?

A If I recall correctly it was hot, it was humid, smelly; it was not very pleasant.

Q In your professional judgement, is it necessary for security that windows in the Tombs be welded shut?

A In the Tombs? I do not think it is necessary to weld the windows shut in the Tombs despite the fact that there was an escape. I believe that there are sufficient barriers now to generally prevent access to those windows.

Q Are there ways that the windows would be covered while still permitting ventilation?

A I don't understand you.

THE COURT: By heavy screen or something?

Q By heavy screening.

A There is a type of screening known as detention security screening. It was developed basically for the mental

hospitals. When we were attempting to get the mental hospitals away from the barred prison block a security detention screen was developed which is built in. The weave on it is slightly coarser than regular fly screen.

THE COURT: Not as heavy as an anchor fence?

THE WITNESS: No.

As a matter of fact, it looks very similar to fly screening. It is very difficult to distinguish between the two.

However, I have seen -- I have done it myself, where I have picked up a chair and thrown it against the screen and the chair comes springing back, because it is on a spring situation. The screening is theoretically tool-proof, but an individual who is in a restricted cell can work on it for maybe two, three, four, five days and get a hole around this big (indicating) in it. It was developed for security reasons, a psychiatric security screen -- that's what it was. It is built into springs right in the window.

MR. BERGER: Could the record reflect that the hole that might be created, that might be "this big," he was --

THE COURT: About the size of a dime?

THE WITNESS: A nickel.

Q In your opinion, does the heat level in the Tombs have an effect upon security?

A I think the heat level in any institution has an effect upon any security.

THE COURT: By saying that I suppose you mean what has been generally true of your remarks and all the other witnesses, that the happier the inmates the greater the degree of security?

THE WITNESS: Yes, sir.

THE COURT: And, therefore, when --

THE WITNESS: The less aggravation -- all these things may be very minor, minuscule, but we start with the base that the individual is insecure, he doesn't know what is going to happen to him. We add to that that we have taken away freedom. Those things we can't do anything about. Anything that we can do, anything else, will help in this whole area of security.

Q For non-maximum security detainees is it necessary that cell furnishings be bolted to the floors and to the walls?

A Not for non-maximum, but definitely in maximum security.

Q For non-maximum security detainees is it necessary to require any lock-in time during the day?

A Well, you may want to make periodic counts and it may be that this is the easiest way to make a periodic count, but part of being minimum and medium security is that there is

permitting detainees to be treated at the Tombs by their own personal physicians?

A No, sir. I see some minor administrative problems, but I see no reason why an individual, if he can afford it, should not be permitted to have his physician come in in consultation with the medical services provided.

Q Are outside physicians permitted into the New York Correctional Institutions?

A Yes, sir, they are.

THE COURT: Universally?

THE WITNESS: Yes, sir. As a matter of fact, I know very specifically, because the Correctional Association has wives and families making the arrangements for a specialist to consult, to examine the inmate, and to consult with the medical staff of the department.

Q I think I forgot to ask you when we were talking about the cleaning of the blankets, in New Jersey did you clean the pillows regularly?

A Yes. Anything that cannot be washed was dry cleaned and fumigated.

Q Is it an acceptable correctional practice for officers to work overtime shifts on a weekly basis?

A It is an undesirable factor.

Q Why?

A What point of view shall I present as being undesirable from? From an administrator's point of view? You do not want to press the officer to work more than the normal work week. At times it is necessary, in emergency. But you are taking a calculated risk in terms of the efficiency of the individual when you continually work a man longer than the prescribed period of time. Also, you have a secondary effect of this in terms of morale. You increase your security risks, and you increase them both mechanically in that the man becomes more or less slipshod in what he is doing, and you increase them in terms of the relationship of officer to officer and officer to inmate -- more importantly officer to inmate.

A man that is working for 12, 16 hours, at a time will tend to become much more testy; he is not able to absorb as much; he is not able to react in as calm a way as he might if he were on a normal shift. This is a concern. You do not want to, except on major emergencies, work individuals overtime.

Q Could some of the duties of the prison officers at the Tombs be assumed by civilian employees?

A I have never made a post by post survey, but I have seen a number of officers in the Tombs who are performing clerical functions which, I believe, could be performed by clerical personnel.

There is a tendency to attempt to back one's self up in the area of security by tying what are in effect noncustodial, noncorrectional officer functions to correctional officer personnel, and the reason that this is very often done is that you have a built in reserve for that emergency.

There is also the other realistic situation that staff, correction officer staff, may want to realistically, as any position, enlarge the scope of their activity, which increases the number of positions available. If a requirement of correction officer is appended to such thing as correction officer-clerk, correction officer-cook, this is a very real factor that is involved.

THE COURT: It makes a larger labor political unit?

THE WITNESS: Yes.

Q Could some of the work within the Tombs be done by detainees?

A I think it could. I think it is desirable.

Q Why?

A Again, we go back to the basic principle. You are trying to do anything possible to ameliorate the tedium, the tensions, the anxieties, under which an individual in a correctional institution, particularly a detention institution, exists.

We can never overcome the anxiety as to what is

going to happen to me if I am in there in terms of my trial. We can never overcome the fact that while I am in there I have lost my freedom, but we can make every single effort along the line to ameliorate the conditions.

Providing work on a voluntary basis, or providing the means of work on a voluntary basis, is, I think, extremely desirable. I have interviewed inmates who have asked to work voluntarily. We can never coerce them. There should never be any requirement whatsoever, any more than I think we have the right to coerce an individual, a pretrial individual, into any particular program; but we must have the facilities and programs available for them to use voluntarily. I can assure you they will use them voluntarily if they are available.

Q In your judgement would you characterize the Tombs as a maximum security institution?

A Yes, sir.

Q To the best of your knowledge, are there any areas in the Tombs for pretrial detainees which are not of a maximum security nature?

A No, sir.

THE COURT: Is that a question before me? I don't mean is it properly before me, but does anybody argue about that?

MR. BERGER: As to any area in the Tombs.

A I know of none for the detainees. As for those on sentence, I believe they are kept in a dormantory situation.

Q Is it necessary to house all pretrial detainees in maximum security setting?

A No, sir.

Q In your estimation, approximately what percentage of detainees who come into the Tombs would require maximum security facilities?

A May I answer that question by developing another, developing a program? I will answer it specifically:

I would say anywheres from 20 to 40 percent at the maximum require maximum security, but I cannot make a positive statement on this without stating that there must be a means of determining the amount of security that an individual requires.

Q That's my next question.

How would you determine which individuals require maximum security?

A Everybody that comes into the institution for a period of, let us say, approximately a week would be in maximum security. They would have to be. During this period there are a number of criteria that might be used to determine whether or not the individual can go into medium or minimum security facilities if they were available. Criteria that

might be used? We are not talking about a full-fledged classification program. That's impossible. But at least there can be part of a security classification program developed. As a matter of fact, it is developed. It is done indirectly, shall we say, by the institutions now, at least in terms of security.

The institutions set up what they call the heavy cases which are pulled away from general population and put in special areas.

THE COURT: When you talk about the institutions, you mean this is done in various places or done at the Tombs?

THE WITNESS: I believe at the Tombs. I believe it is done in all the detention institutions here in the city where the heavy cases are pulled out, where judges, where police, are put in a separate section, where known homosexuals are put in a separate section.

I believe the same thing can be done: instead of increasing security, in terms of classifying for a decrease in security, some of the criteria that might be used on this might be the extent of the bail. Since the Courts have established bail predicated upon a number of factors, namely, at least theoretically, a willingness to reappear --

THE COURT: Are you acquainted with conditions at the Federal House of Detention here in New York City?

THE WITNESS: Very slightly.

THE COURT: When have you most recently --

THE WITNESS: It has been about a year and a half since I visited that.

THE COURT: How would you clarify that in terms of security levels? Maximum? Minimum? Part?

THE WITNESS: They have one maximum security unit. The rest of it would be medium, I would think.

THE COURT: Let me state for the record that the rest of it, as Mr. Goff describes it, is largely a dormitory setup on the various floors in question.

THE WITNESS: There is that maximum security unit.

THE COURT: Yes, there is.

THE WITNESS: There is an isolation maximum security unit inside, it is comparable, I would say, to what the Tombs is.

THE COURT: Proceed.

Q In addition to bail and the crime charged, what other factors would you take into consideration in classifying?

A History.

I think possibly something might also be done with the ROR reports, the information from the ROR reports.

You are looking for something things in terms of security classification, whether it be a detention institution

or a sentence institution.

As part of the total classification process one of the things assigned to an individual is a degree of security. In a sentence institution, or where you have an individual for a long period of time, you are developing a medical program, a psychiatric program, an educational program, geared to the needs of that individual, correlating that with the programs you have. But the first thing you do is have a security classification.

There are several criteria used. Obviously, if an individual has a warrant against him, you are not going to put him out on minimum security.

Secondly, if the individual has a family and has some ties in the community, probably the principle factor that is used in the long-term institutions in determining security, is the tie that that individual has with a family, how long he has been part of this family, and you are doing the same thing, in effect, as the RORs, attempting to evaluate when you are setting up security classifications.

The tie to the family, the existence, or possible existence, of other warrants, detainers, that are thrown in.

You want to know, if you can, whether the individual -- you are looking for roots. That's what you are looking for.

THE COURT: Another thing would be the nature of the charge against him and the seriousness of the possible penalty.

THE WITNESS: Yes, sir. The penalty, the threat; in other words, putting this on a benefit risk basis, what is the risk to me of escaping versus the benefit compared to what is facing me.

You see, in those terms, in terms of possible sentence, to me it is asinine to throw somebody that has a possible maximum sentence of a year into maximum security when he is going to get three years if he tries to escape. In other words, there is a whole series of factors that can be examined to determine roots and this whole risk benefit factor.

Q I would like to show you Plaintiff's Exhibit 2 in evidence, which is a classification chart, or inventory, used at the Northumberland County Jail in Pennsylvania. Is that the kind of checking for roots and background you were talking about?

A I think it is a very sophisticated inventory. It shows a great deal of insight. Very good.

(Pause)

Could I see that for a minute again?

Q Do you have any additional comments?

A No. There were a number of factors that were

brought in there that I didn't even mention. I was interested in the addiction history aspect of it.

THE COURT: Do you see any special problems in relation to security because the Tombs is a facility in the City of New York and because crime rates are high now, and because of the substantial concentration of drug use, drug traffic, and so on in the City of New York that would distinguish the factors that ought to be born in mind on this general subject over other places?

I think the City of New York is plagued with a problem which may be somewhat unique, namely the drug problem.

I do have some difficulties on that, however, when we get to the question of this risk benefit involvement and also the fact that these individuals could, if they made bail, be out.

Q Have you seen the visiting booths in the Tombs?

A Yes.

Q In your opinion, is it necessary security to utilize those booths with the exception of inmates who have been classified maximum security?

A They are maximum security visiting booths. If we go on the assumption that we are running anywheres from 20 to 40 percent maximum security inmates, these would be, in my estimation, a good means of visiting. However, I see no reason

A I think the heat level in any institution has an effect upon any security.

THE COURT: By saying that I suppose you mean what has been generally true of your remarks and all the other witnesses, that the happier the inmates the greater the degree of security?

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A Not for non-maximum, but definitely in maximum security.

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A Well, you may want to make periodic counts and it may be that this is the easiest way to make a periodic count, but part of being minimum and medium security is that there is

is greater freedom of mobility.

Q Would there be any security problem in having hooks in the cells for people to hang their clothing?

A I don't know of any. As a matter of fact, I think in one of the standards -- I'm sure that in the State Commission standards they talk about hooks, some place to hang hooks, some place to put things.

Q How long would a man have to be locked in for a count to be taken? How long should it take?

A Many factors are in it. I would say that in a large institution you should be able to have a solid count in around 20 minutes.

Q For non-maximum security detainees is it necessary to use cells at all or could you use some --

A The desirable thing is to have a series of housing units of different types, squadrooms, for four to eight men, larger dormitories for larger groups of people, for a larger number of individuals. I believe the Tombs is now using dormitory for the sentence men.

THE COURT: What would be the reason for having some larger and some smaller ones? Would it be a distinction as to the men or just for the purpose of having something different within an institution that is all the same?

THE WITNESS: If you are getting into a fine

classification process there may be some individuals that you want in a larger group; there may be some individuals that may prefer, or you may want, a smaller group.

The administrator wants as much housing flexibility as he possibly can. This is all, again, predicated upon this total process of classifying individuals and having program operations. They are really almost one and the same.

Q Would there be any security problem with having individual earphones in cells or housing areas for men to listen to the radio?

THE COURT: I suppose even the city doesn't say there are any problems except for money and feasibility and so on.

Am I correct, Mr. Kranis? There is no objection on principle?

MR. KRANIS: Yes.

Q Would the wiring of the earphones present any security problem?

A I can't see any major security problem. You can hang yourself with anything.

Gratuitously, if I may say so, anything can be used as a tool, a weapon, if it is not bolted down. Many things pass under the guise of security that are not really security.

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THE COURT: Do you see any special problems in relation to security because the Tombs is a facility in the City of New York and because crime rates are high now, and because of the substantial concentration of drug use, drug traffic, and so on in the City of New York that would distinguish the factors that ought to be borne in mind on this general subject over other places?

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A They are maximum security visiting booths. If we go on the assumption that we are running anywheres from 20 to 40 percent maximum security inmates, these would be, in my estimation, a good means of visiting. However, I see no reason

why there could not be another less formidable type of visiting. But, again, we have to get into this question of classifying offenders.

THE COURT: You have in mind an ideal system in which they were properly classified and those who were good risks would be housed in less than maximum security and be able to visit in less than maximum security?

THE WITNESS: Yes, sir. I can think of two means of reducing.

Again, we are trying to humanize, trying to do away with tedium, trying to make it a better place, the whole correctional facility, trying to overcome the inherent problems that are involved.

On a medium security basis, if you don't have a drug case -- a drug case, I would feel a little differently about that.

There is no reason why you cannot do the same thing they are doing in maximum security institutions upstate, which is a table, no barrier, where you can touch the individual, you can kiss your wife, you can hold your baby for a short period of time, at the beginning and at the end.

On minimum security, I believe at one time -- I'm not sure -- on Rikers Island there were family visits in the adolescent section when C76 first opened up. There were

contact family visits out on the lawn in good weather, so you could have that kind of safety without a barrier, without a table.

Q In drug cases are there any types of security checks under which contact visits would still be possible?

A Yes. It would cause a few more administrative problems.

One, you have to search -- I suspect it is being done now -- you have to search visiting rooms before and after visits.

THE COURT: Search the visitors?

THE WITNESS: Visiting rooms, just the rooms.

Secondly, and the most important thing, is a strip search of the inmate after he leaves the visit.

THE COURT: That would, in your opinion, take care of the necessity, or eliminate the necessity, of stripping the visitor or searching the visitor?

THE WITNESS: Yes.

On a minimum security basis there is no reason that I see to search any visitor.

The control that you have, the administrator has, is over the inmate. Now it does cause -- it is an administrative effort. You have to strip search, and a good strip search takes time.

When you get into this classification system I am not advocating that every individual that comes into that institution be put in minimum security because the flow, the very flow, of individuals, and the turnover, I think, would be administratively impossible to classify everybody, but after a period of a week -- this could be worked out statistically because I don't know what percentage of individuals who come in go out within a week's period -- once they are in there a week there is an assumption there is going to be an extended period of time, and then the classification process could be carried on.

Q What advantages would there be to institutional security in having face-to-face visitors?

A You are reducing tensions again; you are reducing anxieties; you are reducing frustrations -- just to be able to touch somebody; not just to see them but just to be able to touch them.

Q Would you be in favor of withholding visits or correspondence privileges as a form of punishment if a detainee has been guilty of infraction?

A No, because it would cause me more discipline problems in the future.

This is not a means of disciplining individuals. From where I sit we use the same process of the whole concept

MR. BERGER: Objection, your Honor.

THE COURT: I will take judicial notice of it. I also read the report.

Q Isn't it true that incarceration, in general, creates tensions and builds up frustrations?

A Yes, sir.

Q You testified as to the desirability of having movable desks and chairs. Isn't it true that such movable items of furniture can easily be fashioned into weapons?

A Anything can.

Q Do you know Professor Anthony Cooper from NYU?

A Yes, sir.

Q Are you aware of the fact that the Department has contracted with Professor Cooper --

MR. BERGER: Objection, your Honor.

THE COURT: Let's not put it in terms of awareness. If you want to know whether he believes that having Professor Cooper do something would be a good thing, or whatever it is that you want to ask, I will be interested to know that.

Q If the Department were to contract with Professor Cooper in the hopes of having a classification system devised, based upon your knowledge of Professor Cooper, would you think that the Department would have an acceptable classification system?

MR. BERGER: Objection, your honor. That's highly speculative. You have to see what the --

THE COURT: Overruled.

A I would certainly hope so, because Professor Cooper has been in contact and communication with me on this matter.

Q With respect to the Manhattan House of Detention?

A With respect to the classification program.

Q Do you know why he has been in contact with you?

A Possibly the Department has suggested it.

THE COURT: I take it what this boils down to is that you are saying, and that's all you can say since there is no proposed system, you think very highly of Professor Cooper for purposes of trying to deal with a problem of this kind?

THE WITNESS: I think very highly of him as a professor at the Center for Legal Education and Recreation, and I think he has some understanding and smattering of correction. I would not certainly classify Tony as an expert witness in the correctional process.

BY MR. KRANIS:

Q I would ask you to look to the ACA manual. I believe standards are set for classification systems. I call your attention to Page 366. I would ask you this:

Chapter 22, dealing with custody and security

which, among other things, suggests as an essential for custody and security an adequate system of classification, does that chapter apply to detention facilities?

A I think parts and aspects of it, yes.

Q Is there not a separate section in the manual which deals with detention facilities?

A Yes, sir. There is.

THE COURT: The standards are divided into chapters. This has to do with the total full classification process. I wish I could go into more detail on this because I think classification is one of the most misunderstood things there is and the involvement and what classification is in its totality, what the ideal is as contrasted to what can be applied even in the smallest institution; it is applied in the smallest institution not with the ideal of psychiatric and presentence histories and social investigation and the rest, but predicated upon the information that the facility has, limited as it may be, about the individual.

THE COURT: You say it is comparable. It gives me the impression it is comparable --

THE WITNESS: It is similar in effect. Certain things are used as danger signals that are red flags. A history of fire setting will be a red flag. A history of escape is a red flag -- this kind of thing.

In addition to that you are continually looking for risk benefit factors involved and you have to make subjective judgements to be sure and project yourself into the individual, which is one of the reasons you want to know as much as possible about him, but classification can be done on a very rudimentary basis -- I believe just on the information that was presented here in terms of Northumberland -- and it is done all the time informally without the deputy wardens of the institution, even in the smallest jails, knowing about it. They are actually classifying individuals in terms of escape risk and in terms of security classification.

BY MR. KRANIS:

Q Does the chapter on detention facilities refer to classification studies?

A If you are referring to the fact that there is a section in here stating that in large metropolitan areas where there is a heavy turnover classification may be somewhat difficult -- I don't know where it is; there is that referral-- yes.

Q Isn't it a fact that the classification study referred to on Page 366 would have, as one of its main tools, the probation report?

A A probation report would be.

Q Is a probation report available in a detention

facility?

A No, but classification can be done, and is done, and is presently being done, by the New York City Department of Corrections, but it is being done only in terms of unusual cases. I am saying that an individual who has $100 bond, who is in on a scofflaw violation, can't make the bond, doesn't require maximum security. It does not take an involved total classification system to reach that conclusion.

Q Are you aware of any inmate in the Manhattan House of Detention who is on a scofflaw charge on a $100 bond?

MR. BERGER: Objection, your Honor.

THE COURT: I can understand Mr. Kranis' desire to clarify that if there are not. I assume they are not at the Tombs, although I suppose they could be if they disregarded hundreds of violations. But what you mean --

THE WITNESS: I cannot answer that question in terms of the present time. I can, however, in that I did make a study of New York City Department of Corrections scofflaws in an attempt to get legislation to allow for weekend service of time. It was done in coordination with the judicial conference of the State of New York.

THE COURT: Very good.

BY MR. KRANIS:

Q If the Manhattan House of Detention had at least

90 percent inmates who were in on felony charges, and if a large percentage of those inmates, approximately 25 percent, were in on narcotic charges, and if an even larger percentage of those inmates, over 50 percent, possibly 75 percent, were at the time of admission or previously addicts, would you still conclude that the Manhattan House of Detention need not operate on a fairly stringent security basis?

A Sir, I look at the Manhattan House of Detention as being part of a system wherein if there is a classification process in operation you can have minimum medium security facilities. In other words, in addition to classifying individuals you can classify institutions in their totality, or, if necessary, you only clarify part of an institution so you have part of an institution as being minimum security or medium security.

Q I would ask you this same question with respect to what I believe is your recommendation that there be face-to-face visiting. Would you qualify your recommendation at all if you were advised that 90 percent of the inmates were in on felony charges and that a very large percentage, possibly 50 to 72 percent, had either at the time of admission or prior thereto contact with narcotics either through use or sale?

A Sir, I would not classify an individual solely upon offense.

with other individuals. As a matter of fact, he wants to do his own time, generally. He introverts much more in detention than he does in sentence.

Q When you were talking about a classification system before and were relating application of this classification system to an institution's ability to provide face-to-face visiting, were you not placing the greatest emphasis on the escape factor? In other words, I believe you testified that among other factors to be considered was the possible length of sentence an inmate might be faced with, the ROR report which, I believe, relates to bail, other factors such as that specifically with respect to the question of bail and these other factors, that would be whether or not the man would return to court. My question would be: Must not an institution consider many more internal factors rather than the escape factor which might apply to the next court appearance?

THE COURT: Must it not consider it in connection with what?

As I recall Mr. Goff's testimony in this area it was in response to questions about determining who should be in maximum security and who in less than maximum. Are you asking him whether in determining that question other things should be considered than the possibility of escape?

MR. KRANIS: Yes, your Honor. In other words, must not the institution consider internal factors such as the individual and the individual's nature and his possible dangerousness, the individual's addiction to drugs, other factors such as that, in considering whether he should be in maximum security or allowed face-to-face visits rather than just a question as to whether he might escape?

THE WITNESS: I don't think it is a question of whether he will escape or not.

A number of factors which are available, I think, readily available or can be available to the institution in a relatively short period of time of a week or at the maximum two weeks, should be sufficient. Taking into consideration as you point out not only the sentence or the potential sentence, but does this individual have a long history of assaults? This may be a factor in terms of classifying. That bothers me again in this because were I an administrator and I wanted to, I could keep men locked up 24 hours a day in a cell with no recreation because I wanted to run an orderly institution. In other words, I am bending over completely backwards to maintain what may be, in my mind, an orderly institution.

THE COURT: I take it you mean in order to evolve a classification system you first have to determine what your objectives are or what your priorities are?

THE WITNESS: The purpose and priorities in it, yes.

THE COURT: To weigh the value of security against the value of freedom?

THE WITNESS: Yes. The impact of this on the individual and you are continually weighing in this process, continually weighing.

Q So that there are a whole series of factors an administrator must consider before reaching a determination with respect to any of the items at issue.

A But you are also, at the same time, if you make a mistake on the initial classification and you assign an individual to a dormitory which goes on now -- you assign a sentenced man in the Department to work in the Tombs, let's say, to live in a dormitory, and if he starts kicking up and causing a fuss then he is transferred back, he is transferred out, so you are continually doing this process.

The basic point that I have been trying to make along the line is that classification is possible, and apparently the Department believes it is possible because they have undertaken a study on it; that efforts have been made in the direction of setting up a minimum security facility for the Department. There has been talk about this but there has been no activity on it. So to me it is a point that has already

been established, that minimum security is possible, that it should be in existence.

Q Are you familiar with any of the detention facilities in the country which might be classified as minimum security facilities?

A Not specific institutions that are classified but specific individuals. As a matter of fact, I was talking this morning to one of the jails in New Jersey where they do have detention men who are released and held in what might be considered minimum security to maintain the institution.

You see, many of the counties in the United States have split detention from sentence so that -- and I can name specifically Morris County in New Jersey, Monmouth County in New Jersey, New Brunswick, Middlesex County, where they have no sentence men in jail: here they have to make a classification of the men whom they want to release, who are detainees, to work in the jail to do the maintenance work, and they do not have the luxury of having sentence men in their total facility. So they release fortuitously and very good the men to do work and they have them in a different classification setting.

THE COURT: We all acknowledge the differences between the setting of a detention center and the psychological state of being a detainee as distinct from that of being a

sentence prisoner, but bearing that in mind do you believe there is a substantially greater risk in using properly classified detainees to do such work or overusing sentence prisoners?

A No, sir. Not if they are properly classified. Again, we get to the risk benefit factor in terms of the individual.

I am not going to risk additional sentence or an additional crime if I have a relatively minor offense staring me in the face, even though I am inside. I am not going to risk this.

Q To the best of your knowledge, has a punishment factor been an inadequate deterrent for crime?

MR. BERGER: Objection. That's too general.

THE COURT: I don't see how any person in the whole world can answer that question.

If you want to answer it I will be glad to hear your answer.

A I'm not Socrates.

THE COURT: All I can say is that from my own point of view it is a little confusing to believe that it has been excessively successful since we find ourselves in the situation that we do find ourselves in.

THE WITNESS: If the question had been reworded,

Q In Rochester?

A Yes.

Q If, as has been the case on the third floor, today the Department were to screen in the entire Manhattan House of Detention, or at least all the housing floors, and therefore open windows, in your opinion would the ventilation improve?

MR. BERGER: Objection, your Honor.

THE COURT: Do you really consider yourself to be an expert on that?

THE WITNESS: Not in terms of air flow. The only observation I could make is that I would assume, not being an expert in air flow characteristics, that if there was some way of forcing air there might be, but this, I think, would require an engineer to make an evaluation.

Q Are you familiar with the physical activities available for inmates at the detention facilities in any of the large cities in this country?

THE COURT: Exercise?

MR. KRANIS: Yes.

A In Baltimore they have an outside yard that they are using.

Philadelphia is using an outside yard.

Some of them are using outside yards.

Q Were these yards built as part of the facility?

A In most instances what they consist of, an area on the outside which is generally walled in, and on one other side of the area will be another building, so that an area which may have originally been planned for a parking lot, or something like that between the two buildings, will be closed off and used as a means of getting men outside.

THE COURT: Is the Baltimore County or City facility, whichever it is, in the middle of Baltimore?

THE WITNESS: Yes, sir, it is. It is in the middle of Baltimore, right adjacent to the State Penitentiary which is also, as a matter of fact, in the middle of Baltimore.

Q I believe, if I am not mistaken, you recommended the use of transistor radios in the institution?

A Not today I didn't.

MR. BERGER: That was not on direct.

THE COURT: I don't recall. I don't know what Mr. Kranis is referring to.

MR. KRANIS: Perhaps I am referring to the document that counsel provided us with to indicate what Mr. Goff would testify to.

Q Have you ever tried to use a transistor radio in an institution?

MR. BERGER: He did not testify to that on direct.

THE COURT: I don't know how this subject comes up.

A There was one inmate on the floor that had one and I read his.

Q Can you state whether or not in your section of the floor, any section you have ever been on, there has been a schedule posted stating the hours of recreation, a schedule for the movies, and a schedule for mail?

A There has not been one posted on the A side.

THE COURT: Do you mean they were posted on the other side or --

THE WITNESS: It was not posted on the side that I was on.

Q Will you state whether or not you have received visits while you have been at the Tombs?

A Yes. I received visits.

Q From whom?

A My family, my wife.

Q How often do you receive visits?

A Twice a week every week.

Q Can you state whether or not you have ever gotten a phone in the visiting room that didn't work properly?

A Yes.

Q Can you state on how many occasions, approximately?

A Several times the phone is not working, doesn't work.

Q When you get a phone that didn't work, did you then complain to the officer on duty?

A Yes.

Q Can you state what the officer on duty did or told you at that time?

A He tell you sometime there was not another phone vacant at the moment and you have to wait. Sometime I would wait 30 or 40 minutes and you get another phone that doesn't work. Sometimes we would not have the visit at all.

Q Has there ever been a time when you have not had a visit at all because the phone was not working?

A Yes.

Q Did that happen to you more than once?

A It only happened to me once.

Q Can you state the exact words of what the guard said to you at the time you didn't get to have a visit?

MR. KUNIS: Objection, your Honor.

THE COURT: Overruled.

A The words he said to me?

Q Yes.

A He said I blew the visit and he walks off.

Q Mr. Hood, you stated that you were discharged from the army because of asthma.

A Right.

ch-lf

JAMES RHEM, et al.,

vs.

70 Civ 3962

BENJAMIN J. MALCOLM, et al.

January 22, 1973
10:00 a.m.

APPEARANCES: ROCHELLE BARON, ESQ.
(For State of New York)

(Trial Resumed)

MRS. SHAPIRO: The plaintiffs would like to call Mr. Hood to finish his testimony.

THE COURT: Remember you are under oath.

W I L L I A M H O O D, resumed.

DIRECT EXAMINATION CONTINUED

BY MRS. SHAPIRO:

Q Mr. Hood, are you still confined with the Manhattan House of Detention for Men?

A No.

Q When did you leave the Manhattan House of Detention for Men?

A December the 4th.

Q When you left the Manhattan House of Detention, where did you go?

A I was in the state correction facilities.

THE COURT: Which used to be called Sing Sing?

THE WITNESS: Yes.

Q When you were at Sing Sing, did you receive any visits?

A Yes.

THE COURT: When he was at it?

MRS. SHAPIRO: Yes.

THE COURT: Are you not there any more?

Q Are you still at Sing Sing?

A No.

Q When you were at Sing Sing, did you receive any visits?

A Yes.

Q From whom?

A My wife.

Q Would you describe the room in which visits take place in Sing Sing?

A Just a big room. We have contact visit. A person to person visit. Just like this table here between us and you sit here and talk. Hold hands and kiss if I want to.

THE COURT: Didn't you want to?

THE WITNESS: Yes, well, I did.

Q Can you state how long such a visit is allowed to last?

A Each inmate is allowed a two hour visit, visiting is

from nine to three.

THE COURT: Two hours within that period?

THE WITNESS: Yes.

Q After you left Sing Sing, where were you taken?

A I made a mistake on that. You can have a visit from nine to three if you want.

THE COURT: I thought you said two hours.

THE WITNESS: Each inmate can stay all day.

Q How often are you allowed visitors at Sing Sing?

A Five times a month.

Q After you left Sing Sing, were did you go?

A Great Meadows Prison.

Q Are you presently incarcerated at Great Meadows?

A Yes.

Q Right at this moment?

A Not right at this moment, no.

Q How long were you at Great Meadows?

A I was in Great Meadows January the 3rd and I left there the 11th.

Q Did you receive any visits at Great Meadow?

A No.

Q When you left Great Meadows, where were you taken?

A 427 West Street.

Q Have you had any visits since you've been at West

Street?

A Yes.

Q Are you still at West Street?

A Yes.

Q Who visited you first?

A My wife.

Q Can you describe the visiting room in which your wife visited you at West Street?

A We were just in a little room, just two chairs in it and a person to person visit. I sat down and talked to her.

Q Do you know whether you will be allowed another such visit at West Street if you remain there?

A Yes, I will.

THE COURT: What you are really asking is how frequently do they allow visits? Do you know what the rules are on that?

THE WITNESS: They're allowed to visit twice a week, I think.

Q Do you know how long the visits are supposed to last at West Street?

A From nine to 3:30. From 9:00 a.m. to 3:30 p.m.

Q Do you know what days visits are allowed?

A Everyday, seven days a week.

Q Mr. Hood, can you state whether you have a preference for the type of visits that you had at West Street and at Sing Sing as compared to the Tombs?

THE COURT: It depends on whether you like your wife, I guess.

A Excuse me now?

Q Could you state whether you have a preference as to the kind of visits you prefer, the kind that you had at West Street and at Sing Sing or the kind that you have at the Tombs?

A The kind I had at Sing Sing and West Street.

MRS. SHAPIRO: I have no further questions.

CROSS EXAMINATION

BY MR. KRANIS:

Q Mr. Hood, were you recently convicted of a crime?

A Yes.

Q What crime?

A Assault.

Q Were you sentenced?

A Yes.

Q What sentence did you receive?

A Eight years.

THE COURT: Is that a state conviction?

THE WITNESS: Yes.

THE COURT: Then what are you doing in West Street?

MRS. SHAPIRO: He's testifying this morning.

THE WITNESS: I was brought back for this here.

THE COURT: Oh. Just for the purpose of testifying in this case?

THE WITNESS: Yes.

THE COURT: You have no federal charge against you?

THE WITNESS: No.

THE COURT: All right.

Q Were you ever convicted of a crime before?

A No.

Q Were you ever arrested before?

A Yes.

Q How often?

MRS. SHAPIRO: Your Honor, unless this is leading somewhere --

THE COURT: I wouldn't put any particular weight on that as far as credibility is concerned. It's too remote.

Q At West Street, how long does each visit last?

A An hour, if it's not too crowded.

Q About an hour. If it is crowded, less time?

THE COURT: Then at West Street, it is what I thought it was at Ossining, is that right, the period of time in which visits can take place is nine and 3:30 in the morning

but the actual visit is only about an hour?

THE WITNESS: Yes.

THE COURT: All right.

Q That's at West Street?

A That's at West Street.

Q How long have you been at West Street?

A Since the 11th of this month.

Q How many visits have you had at West Street?

A Two.

Q How long did each visit last?

A One lasted about an hour and one lasted about three hours.

THE COURT: Did you have to ask special permission for the three hour visit?

THE WITNESS: No.

THE COURT: Then why do you say that the visits only last an hour?

THE WITNESS: I say if it's crowded on the weekend it's only an hour.

THE COURT: Otherwise, it's as long as you want, is that right?

THE WITNESS: Yes.

Q Is that true at Ossining?

A Is what true?

Q Is there a time limit on the length of an individual visit at Ossining, at Sing Sing?

A No, you can visit there from 9:30 to 3:30, if you want.

Q Do you know the inmate population of Sing Sing?

A No.

Q Do you know the inmate population of the West Street facility?

A Approximately 300.

Q Approximately 300.

MR. KRANIS: I have no further questions.

THE COURT: Is there anything further of Mr. Hood?

MRS. SHAPIRO: No, no further questions.

THE COURT: Thank you, Mr. Hood.

(Witness Excused.)

THE COURT: Am I correct, ladies and gentlemen, that in view of what was stated in the conference in the robing room before we began in open court this morning, there is no further testimony at this time?

MR. BERGER: That's not quite correct, your Honor, there's one more witness, very brief.

THE COURT: All right.

MR. BERGER: Mr. Herman Rubinfine.

H E R M A N R U B I N F I N E, called as a witness by the

A. 7 Upper C-3.

Q. How long were you on the C side?

A. Around four, five months.

Q. Were you subsequently moved to a different part of the seventh floor?

A. I moved: yes, sir.

Q. Right. What is your present cell location now?

A. 7 Upper E-3.

Q. Is there any window near your present cell?

A. Yes; there is.

Q. About how large is this window?

A. You mean the whole window?

Q. No. My question was going to be whether you could see out the window.

A. Just a small part. You can just about see out of it.

Q. About how much of the window pane can you see out of?

A. It is about two foot square.

Q. When you're standing in your cell, can you see out to the street below?

A. If I stand up on the seat that there -- they have in the cell, I can see outside.

Q When you're standing normally, as I'm standing now, in your cell, can you see out to the street below?

A No; I can see the buildings and the bridge.

Q How did you say you see down to the street?

A There is a steel bench that is welded to the bars in the back of my cell and if I stand up on that, I could see down into the street.

Q Do you do that often?

A When I want to look down into the street.

Q When you were up on the C side, cell 7 upper C-3, were you able to see out a window from that location?

A Well, I would have to answer that like you couldn't see out of there because it is too far away, so you wouldn't be like lookingout of it.

THE COURT: You could see the window but you couldn't see anything through it except maybe a piece of sky?

THE WITNESS: Right. If I was close to the window, I know I would be able to see out of it, but it's too far to look.

Q Are the windows closer to yourself on the E side than on the C side?

A Very much so; yes, sir.

Q When you were on the C side, how did you feel

about not being able to see out the window?

A. It's very depressing. You know, I was locked into a big box and just didn't have any access of, you know, like finding out what was happening or anything. It was like a dungeon or something.

Q. Does it make a substantial difference to you now that you can look out a window?

A. Right. Right. Yes, sir. Very much so.

Q. Do most of the detainees on your floor have a window that they can look out the way you can now?

A. No, sir; not at all.

MR. KRANIS: Objection, your Honor. There's no foundation as to how he might know what the other detainees on his floor have access to.

THE COURT: I think you can cross-examine him about that, but I would suppose somebody whose been there 15 months has a pretty good idea even being locked in a cell most of the time.

Q. Do most of them have windows that they can see out of?

A. No, sir.

Q. On the lower tiers can you see out of the window?

A. Not at all.

Q In the lockout area?

A No, sir.

Q Do some of the other detainees on your floor ever have access to your window?

A Yes, sir; but not with my permission. When the doors are open, they just come in my cell like, you know, when I come back to lock in, I will find someone standing up on my bench looking outside the window. I have to ask them to leave. He say, "I just want a shot of life."

THE COURT: "A shot of life"?

THE WITNESS: Right. He wants to view the streets.

THE COURT: Right.

Q Mr. Meade, is there a vent near your cell?

A When you say "a vent," I mean, could you explain, you know --

Q A ceiling register that --

A There's two vents.

Q (continuing) -- from which air might come, a ventilation system?

A Yes; there is.

Q Has that vent been producing any air during the

A. Here recently I have noticed that there is something coming out, you know.

THE COURT: How far is it from your cell?

THE WITNESS: Right outside the cell, your Honor, I can just see it. It's located on the roof.

THE COURT: About as far as those vents located on the wall (indicating)?

THE WITNESS: It would be a little bit closer but it would be flat on the wall, on the ceiling, I would say. Just a little thing, sir.

Q. When did this vent begin producing air?

A. I can't tell you just when. I could tell you when I first noticed the vent. I first noticed -- I couldn't tell you exactly when I first noticed it. It was shortly after they painted it with a paint brush. They had been painting the cells on the upper E side. In fact they painted the whole seventh floor, you know, various colors, you know, trying to brighten it up a little bit.

In doing so, one of the painters was cleaning his brush and he happened to, you know, go along this here particular spot and it was a vent, you know. You could see a whole lot of little holes that were, you know, halfway painted.

Q Since the vent -- since you have noticed it -- have you felt any ventilation from it?

A Out of curiosity I put my hand up there and I did feel some.

Q When you were in your cell --

THE COURT: Is it actually in your cell or did you put your hand up there when you were in lockout?

THE WITNESS: No, sir. See, the cells on the E side, they're open on both ends and I could reach my hand through the bars standing up on that particular seat that I look outside with.

THE COURT: I see. Okay.

Q Since you noticed this vent, have you felt the ventilation in your cell change any?

A Yes, sir.

Q How is that?

A When the people use the toilet, the foul smell, you know, -- I can smell it.

THE COURT: You mean that is the new development?

THE WITNESS: Well, if you want to call it a new development.

THE COURT: Or was it always there? Has it been that way as long as you're in the cell?

dbck Wende-direct 772

THE WITNESS: It is more now. I mean, I can --

THE COURT: So it hadn't improved?

THE WITNESS: No, sir; not improved. Not at all.

BY MR. BERGER:

Q How has the ventilation been this winter in general?

A. How has the ventilation been?

Q Yes; this winter.

A. It's been very poor. Very poor. The windows -- we had windows, you know, that we could open at one time but they had been welded shut, and since this has happened, you know, it's uncomfortable in both winter and summer because of this. They have the heat up, if I can, you know, answer in that way. They have the heat turned up because of the cold. But the heat is too much, you know, and it's very uncomfortable at night trying to sleep. You are dried up all the time, you know. You never sleep a full night.

THE COURT: Will the parties agree whether the windows were welded after the riot; is that the explanation?

MR. KRANIS: The windows haven't been welded

since Mr. Meade has been in the institution.

THE WITNESS: That's untrue, your Honor.

THE COURT: All right, never mind.

MR. KRANIS: Mr. Meade's testimony --

THE COURT: Never mind, Mr. Kranis. I thought there was an agreement as to when and why they were welded, but there isn't; I have to go along the normal course.

MR. BERGER: Let me state that since one part of our consent decree is that the windows will be open in the summer, I won't pursue that.

BY MR. BERGER:

Q What I did want to know is the effect of the heating system in the Tombs and whether it is comforable or uncomfortable.

A Very uncomfortable.

Q Is there a second vent actually in your cell?

A Yes; there is. Just on top of the commode, the bowel.

Q What does that vent do?

A Nothing that I know of. It is just there. It is clogged up and the roaches have an access to myself through it but so far as doing anything, not to my knowledge.

dbck Wendle-Direct 704

Q Have you ever conducted any exploration to see how this vent in your cell works?

A Yes, sir. I tried to look through it, you know, by punching holes where the dirt had accumulated, the dust, and I couldn't see anything, you know. I could see just a little bit of light, you know, from the reflection of the light on the inside of my cell, and then one occasion they were changing light bulbs, because the -- they change the light bulbs in this particular room, I had occasion to look inside and it was all dirty, you know. I could see where I was punching the holes at and everything like that.

Q You went around to the back of the vent?

MR. KRANIS: Your Honor, I object to this. It seems to me that counsel is leading the witness into certain testimony. He's not asking him questions.

THE COURT: I don't think it's vital in a situation of this kind to ask the witness what he means. I will allow the question.

MR. BERGER: I just wanted to clarify it.

Q You say you went into a room and you could see the holes from the other side and I wanted to understand what that meant.

THE COURT: Does that mean you looked at

it from somewhere else than your own cell?

THE WITNESS: Yes, sir.

THE COURT: Where?

THE WITNESS: In the hallway, you know, it leads into my cell, there is a door there. There's a trap door there and when it is opened up the repairman, whatever he has to do, he goes inside of this room, and then he changes the light bulbs or whatever he has to do in that room. And that's when I observed this here so-called vent.

THE COURT: If I understand you correctly, you are saying that you have looked at it from both ends.

THE WITNESS: Yes, sir.

Q Is there any air coming out of that vent?

A No, sir.

Q When you put your hand up to it, do you feel anything?

A No. The only thing, like I said before, was the roaches.

Q Mr. Meade , how would you describe the noise level in the Tombs?

A It is unbearable. The majority of the time it is unbearable.

Q How are the detainees awakened in the morning?

A. You mean normally? Just on any given morning?

Q Correct.

THE COURT: Isn't there a regular system?

THE WITNESS: Yes, sir.

THE COURT: What is that?

THE WITNESS: It is a very disturbing awakening, you know. The radio is, you know, turned on to a very high level, and it is not a warm-up thing. They just turn it right on.

Before they do that, the lights are turnedon and then you have the banging of the keys and have some slamming of the doors. And all this here is, you know, what you have to look forward to early in the morning, this wake-up thing.

Q What partof the seventh floor do most of these noises originate from?

A They would have to originate from where the officers are.

Q Where is that?

A That is located in the front, what they call the bridge area, central.

Q Is your cell near that area?

A No; I have the furthest cell like, you know,

dhck Veadle-direct 765

that whole row that I am occupying. It would be the furthest section from the bridge.

Q What kinds of noises do you hear in the morning part of the day? Would you describe that to the court?

A Yes. Early in the morning they have, I presume, that they have emptying of the garbage cans and then they have to bring the empty ones back. That's the first noise that you hear, is a grinding on the floor, you know, the dragging of a stack of garbage cans and it would be distributing to the different sections.

Then you have the lights, then you have the radios turned on. Then you have the build-up of the voices, the clanking of the doors, and there's a real piercing sound from the trays that we use, the steel trays, you know; the third floor help would be upstairs early and they would be stacking the trays for the morning meal and it would just be a constant, you know, high pitched clanking, and this adds to that noise barrier, too. I mean, that noise volume.

Q Do these types of noises continue throughout the day?

A Continuously. All day long. All the way up into the night.

Q Is there any time of day that they turn the

dhck Redirect 799

radio off?

A. Yes. They turn the radio off at the count time in the morning they turn it off, and then after count they turn it back on. That would be about 9:00 o'clock or right after the count is clear they turn it back on.

Then it will stay on until about 1:00 o'clock or so. Then they change that for the television. Then they play the television until 3:00 o'clock. They turn the television off and then they turn the radio on after the count. And then they keep the radio on until the last lockout. That would be the 8:30 lockout. And then they put the television on.

Now, when they turn the television off again at the 8:30 bell, sometimes there is a game on or something, a basketball game --

THE COURT: Just a minute. I thought you said you kept the radio on until 8:30 and then TV?

THE WITNESS: The TV to 8:30.

THE COURT: What time is the TV turned on before 8:30 then?

THE WITNESS: It is turned on 6:30 to 8:30.

THE COURT: You are saying at 8:30 there might be a game going on?

dbck Meade-direct 369

THE WITNESS: There might be a basketball game going on. What they will do at that time, they will turn the television up very loud so that they will give the opportunity, so they say, for everyone to hear but at the same time they will have the radio turned on, too. Because it is a usual thing to have the radio played until 10:00 o'clock, which is supposed to be lights out. So they have the two entertainment, shall we say, going at the same time. And that's a complaint so I won't enter that.

BY MR. BERGER:

Q Mr. Meade, can you speak to people in a normal tone of voice during the day?

A No, sir.

Q How do you have to speak?

A Like I had been asked to here, you know, raise my voice, you know. I have to scream some of the times, you know, to get like a message to someone. Like this morning, I was trying to get a telephone number from Mr. Scott, and I had to almost, you know, yell my lungs out, you know. And I could hear him, you know, but he couldn't hear me.

Q What tone of voice do the officers use when they speak to you?

A. When they're close up on me they don't have to holler, you know. If I'm sitting in the back of the room or something like this here, in the back of the lockout area they have to holler and then they pass the word down.

Q After the lights go out, are there any noises --

THE COURT: What time is that? That the lights go out.

THE WITNESS: It varies, your Honor. Sometimes the light doesn't go out, but they're supposed to, I believe, they're supposed to go out at 10:00 o'clock. I believe that's the time.

THE COURT: All right.

You're asking about after 10:00 or asking literally after lights go out?

MR. BERGER: After lights go out.

THE COURT: All right.

Q And throughout the night, are there any noises that continue at that time?

A. Yes. You have the general talking, which is emphasized because the radio is still on sometimes and they have to talk over that to be heard. They'll be hollering to each other from different cells.

After this, after the population has quieted down,

do you know, like for sleep, the officers in the front, you know, you could hear them very distinctly with the keys. They have to do [illegible] they have to do. They have to open doors and shut doors and this is, you know, disturbing because it interferes with that particular peace that you would have if everything was like it was.

Q Mr. Meade, is there any time of day when it is quiet in the Tombs, when you can just sit and think or read or --

A Not in the daytime.

Q (continuing) -- or be without noise?

A Not in the daytime; no, sir. Unless I go to another part of the Tombs, you know.

THE COURT: What part do you mean, like the library?

THE WITNESS: Yes, sir. Like if I had to go to the library or something like that.

THE COURT: It is never quiet in the cell block?

THE WITNESS: No, sir. Downstairs in the counsel room where I speak to the lawyers at, you know, it is comparatively quiet in comparison with the floors. It is quieter.

THE COURT: Right.

BY MR. BERGER:

Q Mr. Meade, are you ever allowed to stay alone in your cell during the lockout period?

A Not as a rule; no, sir.

Q By the way, do you have a cellmate?

A No, sir: I haven't.

Q Have you ever sought permission to stay in your cell?

A Yes, sir.

MR. KRANISH: I object to the line of questioning. There's no dispute as to the facts. There is no optional lockout in the institution. The Court is aware of it and I fail to see the need to pursue this line of questioning.

THE COURT: If it is admitted, is there any particular need to bring out facts about it?

MR. BERGER: Yes, your Honor; there is an incident where Mr. Meade was, for a while, permitted to stay in his cell during lockout.

THE COURT: What do you consider to be the significance of that?

MR. BERGER: It is to illustrate one of the reasons why optional lockout is needed. Mr. Meade

requested it; his request was reasonable, it was granted for a while and then revoked, and that is a circumstance where it was eminently reasonable that he be permitted to stay in his cell.

THE COURT: I don't suppose it would be needed. It does it might be possible for the optional lockout. The circumstances which existed then could then be applied. I will hear it for that limited purpose, Mr. Berger. Go ahead.

BY MR. BERGER:

Q Would you tell the Court the circumstances under which you sought permission to stay in your cell during lockout?

A Yes, sir. Recently I had the flu or it was diagnosed as the flu. Or I had fever and I asked to see the doctor and I asked to see him on a couple of occasions. Then I had to demand to see a doctor because I was not taken upstairs to see the doctor.

The officer said that he would call up, you know, and have me taken upstairs.

Q Mr. Meade, when you got to see the doctors, when did you seek permission?

A Yes. It was at that particular time when I saw the doctor finally. And he gave me some aspirins and

told me that I had a pretty high fever.

MR. KRANIS: Your Honor, that is not responsive to the question.

THE COURT: No: it isn't, but it is a little hard for some witnesses to understand the concept of responsiveness.

Are we worried about the press? Is there any press here?

MR. KRANIS: The question was the circumstances under which he received permission to lock out and I gather the man was sick.

THE COURT: I understand that, Mr. Kranis, and I want to observe the rules of cross-examination and evidence with sensible discretion here. I don't like to interrupt witnesses more than are necessary. If they wander and there is some public significance to their wandering, that's one thing. If they wander and we hear more than we have to, that's another thing.

Try to answer the questions Mr. Berger is asking you. He didn't ask you about seeing the doctor; he asked you what happened when you did see the doctor being allowed to stay in your cell.

THE WITNESS: Yes, your Honor.

THE COURT: Now, you got to see the doctor

and I guess you must have asked him, is I right, you asked him if you could stay in your cell?

THE WITNESS: That's right: that's what I asked him.

THE COURT: What did he say?

THE WITNESS: He asked the captain and the captain said, "No, we don't have arrangements like this."

THE COURT: Were you there then?

THE WITNESS: I was standing right next to the doctor.

THE COURT: When the captain made this remark --

THE WITNESS: When the captain made the remark. The captain made the remark from another office.

THE COURT: All right.

BY MR. BERGER:

Q Did the doctor express any opinion as to whether or not you should stay in your cell?

A Yes. He said that I was to stay in my cell. I asked him permission.

I said, "I just want to sweat it out."

He said, "Well, then we will work something out that you will be able to stay in your cell."

That's when the captain came into the room. He said, "We don't have these kind of facilities. You know, we are under order not to let you stay in." And --

Q What finally happened?

A I was given permission by the doctor and the captain to stay in my cell. They called up someone. They got clearance and then I stayed in my cell.

Q How long did you stay in your cell?

A. I stayed in two days, and on the third day I was told that I would not be allowed to stay any more because someone had spoken to the warden, to the deputy warden, excuse me, and the deputy warden had cancelled --

MR. KRANIS: Objection, your Honor.

THE COURT: Yes; I think you will have to establish that by direct testimony.

Can you tell us who it was who said this?

THE WITNESS: Yes; it was the A man.

THE COURT: Who is the A man?

THE WITNESS: Mr. Weinstein. I don't know how to spell that. He's the A man on the seventh floor in the Tombs.

Q He's a correction officer?

A. He's a correction officer. And he's the head

CO on the floor.

THE COURT: All right. Then I will accept the testimony for what it is worth.

Q. He is the one who told you --

A. He came to me and told me this. He told me I would not be allowed to stay in my cell any more because that order has been cancelled by a deputy warden Weinroch.

Q. Mr. Meade, do you perform any special duties in the Tombs at the moment?

A. You say special duties. I have a job there.

Q. What particular task do you perform?

A. I work on the inside newspaper for the Tombs.

Q. Is that a job for which you are paid?

A. Here recently; yes, sir. Right.

THE COURT: I read.

A. Excuse me. It is not paid for the extra work on the newspaper, you know. I do a little help of working in the library and this is what I am paid for, you know.

Q. How long have you held this position on the newspaper?

A. A little before September.

Q. Does your work ever take you up to the library?

A. Yes, sir.

program has been squashed since then. To my knowledge, it has been.

Q To your knowledge, how many lectures were actually given in that program?

A Like I said, whoever the man was, he gave one that I know of.

Q I see.

Mr. Meade, are you married?

A Yes, sir.

Q Where were you married?

A Last year in the Tombs. July the 11th.

THE COURT: Are you the man about whom I read a story?

THE WITNESS: Yes, sir: that's right. Right.

Q Mr. Meade, since the date of your marriage, has the Department of Correction permitted you to visit face to face with your wife?

A No, sir.

Q Have you been able to embrace her or hold hands with her or anything like that?

A No, sir.

Q Would you describe to the Court why not?

A It is not permitted. They don't have contact

visits, so they say.

THE COURT: What do you mean "so they say"? They don't, do they? It is a question of whether it could be done, but they don't have any, do they?

THE WITNESS: No; to answer that, I would have to go into a long thing.

Q I will attempt to ask you.

THE COURT: All right.

Q For the record, could you state, Mr. Meade, the visitation facilities at the Tombs, describe them?

A Right. They have a visiting area located in the Tombs and it is like a little stall with a telephone and a small pane of glass that you look through, and you talk on the telephone to whoever is visiting you. And this is it. This is the extent of the visit.

Q Are you able to see your wife through that glass?

A If I'm standing up talking on the phone, I can't see her. She's very short.

Q What do you have to do?

A There's a bar located inside. It is about four -- four foot something. It is about four foot, and it is a rail like for using -- to rest your arm on while talking, I guess. Well, I sit up on this bar and I look down and I could see her.

THE COURT: Is there anything she could stand on on the other side?

THE WITNESS: No, sir; there's no chairs, nothing for her to sit on. She could sit on the windowsill, but I won't be able to speak to her.

THE COURT: I meant a stand.

THE WITNESS: No, sir; no stand.

Q Are you able to converse over the phones?

A It's not as good as the regular telephone, you know. You can just about hear sometimes, you know. Like there's one section that you can hear very well and that's the section I try to get to, you know, if I can change.

Q What recourse do you have, if you and your wife get a bad phone?

A There's a procedure that you follow. Once you get inside these here phone booths, visiting booths, the door locks behind you and there's a guard who is on patrol, and in the event anything happens or anything, if you have to change a book or anything, you call the guard.

THE COURT: How do you call him?

THE WITNESS: You just call him, "Officer."

THE COURT: You said that the door locks behind you.

THE WITNESS: There's a screen in the back of the door. It's not a solid.

THE COURT: Right.

THE WITNESS: It's not as solid as a screen mesh.

BY MR. BERGER:

Q By the way, when you're locked in behind you, how much room do you have behind you in the booth?

A You don't have that much. It's very tight.

THE COURT: About as big as the witness box you are in now?

THE WITNESS: This would be bigger. This would be much bigger.

THE COURT: About as big as an ordinary telephone booth?

THE WITNESS: Yes, sir; right.

Q You were explaining to the court how you go about --

A Right. You call the officer and when the officer comes, you tell him whatever is the problem, you know. And then he'll go outside and call up, you know, to get you another booth or something like that. If he can converse with it -- you know, whoever you are visiting with, he can tell them to go to another booth. He

will usually pick up the phone or make motions or stuff like this. Normally they go to the telephone and call up and converse with the other officer on the other side and then they change up your booth like that, you know. If the officer -- you didn't ask me that.

Q Under the institutional rules, how long are you and your wife permitted to visit with each other?

A A half an hour, I believe.

Q If you get a bad phone and you have to switch booths, are you and your wife given any extra time to make up for it?

A No, sir. I will answer that not as a rule. Once the bell rings, that's it. There has been occasions that this has happened and I asked the officer, you know, and I was extended a little extra time.

Q How much time have you sometimes lost when the phones didn't work?

A Ten, 15 minutes.

Q On the occasion when you lost 15 minutes, were you given any more time?

A No, sir. I almost had -- well, you didn't ask me. No, sir.

Q Are there any other delays which might subtract

from the 30 minutes you have for your visit?

A. If we are late getting downstairs. There was one occasion when my wife came kind of late. It was at the last lockout -- I mean, the last call for visits, and there was some trouble getting downstairs because they were in the midst of running people back and forth to the different floors and I got downstairs and it was cut kind of short.

Q. Mr. Meade, where does your wife live?

A. She lives in Philadelphia.

Q. Is she able to come here frequently?

A. No, sir.

Q. About how often is she able to make it?

A. I haven't seen her now for a while. I was hoping to see her today. She used to come about once a month.

Q. After she comes on a visit, would she be permitted to come back and visit you again the next day?

A. No, sir. No, sir.

Q. Why not?

A. My visiting days are on Mondays and Thursdays, and she's in Philadelphia and she wouldn't have anyplace to stay over here and even if she did, she couldn't.

Q. Mr. Meade, what hours on Monday and Thursday is

she permitted to come and visit?

A. I believe the time is 4:00 or 4:30, something like that, to 7:00, 7:30. I believe it is.

Q. Are there any visiting hours in the afternoon?

A. Well, that's what I mean.

Q. I mean, earlier. In the morning or early afternoon?

A. No; you have to get a special visit to do that.

Q. Do these evening hours present any difficulties for your wife?

A. Yes. As it's well known, New York is pretty dangerous, and she's very small. She comes over here by herself, you know, and there's a constant worry of mind if she makes it home or not, you know.

Q. Mr. Meade, do you and your wife have any children?

A. Yes.

Q. How many?

A. Two.

Q. Are they boys, girls?

A. A boy and girls.

Q. How old is the girl?

A. Two years in December.

Q. How old is the boy?

A. He's about eight months.

Q. Was the boy born since you've been in the Tombs?

A. Yes, sir.

Q. Have you ever seen him?

A. No, sir. Just a picture.

Q. Is he your son, I take it?

A. Yes, sir.

THE COURT: Maybe it's none of my business, but were you allowed to visit with your wife while you've been in the Tombs?

THE WITNESS: No, sir.

THE COURT: All right.

Q. Have you asked your wife to bring him?

A. No, I haven't; no. She wants to, but --

Q. Why not?

A. Well, the way that the visiting -- that they have, I mean, you know, to see my son and not be able to hold him, you know. She doesn't agree with me, but, you know, -- no, just doesn't.

Q. Mr. Meade, do you look forward to your visits?

A. I do and I don't.

Q. How do you mean that?

THE COURT: I guess they're bitter sweet; is that it?

THE WITNESS: Perfect. A perfect description; yes, sir.

Q Have you ever asked anyone in the Tombs for permission to have your wife come with your children and have a face to face visit?

A. Yes, sir. I have asked for a face to face visit.

Q Who did you ask?

A. Warden Peter Schaefer.

Q What was the response?

A. Well, he said that something could be worked out, you know. I was asking for a special favor, you know. And well the first one who suggested that we could work something out was Deputy Warden Weinroch and then he says -- the warden, he said that something could be worked out. I could give you the date of that. That was September 13-14; September 14 of last year. And he told me what I would have to do. He told me to get my wife to write him a letter, you know. So this is what I did.

And she wrote a letter to him and he wrote back that it wasn't possible and she was quite upset about it because she had it figured that we were going to get a contact visit.

we've gotten the Medical Association steamed up again and they may help us.

THE COURT: Thank you very much, Doctor.

MR. HERMAN: Your Honor, I have -

THE WITNESS: Meanwhile, my active clinical work, the younger people do that in the clinic, and I have been more interested in this type of human perplexities.

THE COURT: Thank you. It is an area of perplexities, to say the least.

MR. HERMAN: Your Honor, I have a resume which Dr. Menninger prepared and I would like to put that into evidence.

THE COURT: I assume there is no objection?

MR. KRANIS: Is that what I have seen?

MR. HERMAN: That's the one I showed you.

THE COURT: Very well.

MR. KRANIS: No objection.

xxx (Plaintiff's Exhibit 6 received in evidence.)

THE COURT: Let's go ahead with the Doctor. We don't want to take any more of his time than is necessary.

BY MR. HERMAN:

Q Dr. Menninger, have you visited the Tombs in New York recently?

A Yes. Mrs. Menninger and I visited together some three months or two months ago.

Q Dr. Menninger, while you were at the Tombs, did you observe the visiting booths there?

A Oh, yes.

Q Would you tell the Court what your reaction is to them, please?

A I presume you mean the process, not just the little bins?

Q Yes.

A Not the voting booths. You mean the whole process of visitation?

Q Yes, through those booths.

A Well, I think you perhaps asked me that first because that was the most unpleasant and most disturbing detail in the whole prison to me of anything I observed.

May I ask, will you repeat your question?

Q Yes. What was your reaction to the visiting booths?

A Unpleasant and sad and alarmed, all three.

Q Why is that?

A Well, because it seemed to me to be so destructive of the very purpose of the place and so much in violation of ordinary principles of humanity and proper human handling.

Q How is that? How would the booth make an inmate feel after having a visit there?

A Why, I think anyone can imagine that. If you're in

durance vile and you're uncertain as to what your fate is to be and your only known friend is somebody outside who is coming -- perhaps coming to visit you on a certain day and you have the sort of experience which that machinery provides, I think you can imagine the frustration and the disappointment and so on.

THE COURT: Can I try to refine this a little bit, Doctor? There are many questions that I would like to ask you about all sorts of subjects but we're on this one at the moment, and it's quite an important question.

The real issue before me, putting aside the constitutional dimensions of it or whether the existing situation is cruel and unusual punishment, which is a very tough thing to apply as you undoubtedly know, deciding that issue, is whether there is justification for the -- as I understand the defendants' position, Commissioner Malcolm's position to be -- justification for the arrangement or process that they have presently because of the securities systems. Another question is -- that I wouldn't ask you. Obviously we have to get a prison official to testify about it -- but what I would like to hear from you is what you consider to be the difference in emotional impact between this kind of a visiting process and other visiting processes with which you are acquainted.

Even without this kind of a visiting process and with a better one, some of the problems that you have just

described would arise. A man doesn't know what his fate is in any jail and he undoubtedly feels upset and sad when he sees his wife walk out of the prison after the most direct kind of visit allowed, but I would like you to compare the emotional impact as you see it of this kind of a visit with the kinds of visits you have seen elsewhere.

THE WITNESS: Yes. Well, may I preface that by picturing the state of mind or state of personality organization that is being visited. You've got a prisoner or a person who is being detained for some reason, and you spoke of seeing his wife walk out of there. I doubt very much if you can see his wife walk out of there. I doubt if he can see his wife walk in. I'm not sure. But if he sees her at some distance, if he sees her waiting in line, if he sees her at all, she's waiting in line after having walked quite a ways, after having walked there, I won't say for hours, but for minute after minute, while scores of people enter these little waiting booth-like places and who, through some kind of process another is called for.

The individuals, the stress, and whose life has already been increased by the experience to date, you might say, he's in the jail. Now, he has an opportunity -- the hope -- not of prison, but of a system, that this man will be cleared as far as -- when I say "we", I identify myself

with the system with which I've been identified a long time -- we hope it will be cleared with us, either convicted and properly disposed of or acquitted. He would then return to the community from which he came presumably to resume life as productively as possible.

Assuming that his life has been smooth and that the productivity had been established and will be continued, then as little interruption as possible will be desired. On the other hand, supposing it wasn't, and you hoped to bring about a state of mind in him, such as when he has finished his treatment, or in his handling in prison, he will resume a productive life at his expense, and in either case this man is at the moment under excess stimulation and additional stress. He's alarmed and he's in with new people and he's experiencing all the things that witness -- all the unpleasantness and stress and stimuli that the witness spoke of yesterday. Excessive noise and excessive stench and excessive sweating. All these things. The one positive -- I wouldn't say the one, but the most definitely positive element input -- that's a new word; I have just learned it in the past few years --

THE COURT: Don't get to know it too well, Doctor.

THE WITNESS: Well, the most positive experience that he had is going to be the reestablishment of a feeling of contact, of closeness with somebody who has enough love

for him to come clear in there to see him.

Now, if that one experience, that one thing he can look for -- forward to in the week -- well, he may look forward to his meals, I didn't hear the testimony about that, but in some prisons that's not so much to be looked forward to. But say he looks forward to his meals or this or that, the one great thing that he can look forward to is the re-establishment, contact, with this world. Because everybody lives constantly with a lot of contacts established, with you, them, with the judge, with the grocer and so forth. These have all been broken for this man.

Now, this makes for a dangerous state of instability, because without these contacts he can't live psychologically. He has to make some new ones of a sort, perhaps, with fellow prisoners, with fellow jailers, but he can't live in isolation. When he has this contact with the very environment that we hope he can go back to, somebody that loves him, that he supposedly loves, this much or that much, it doesn't matter it's somebody. He looks forward to this experience of saying a few words, touching her hand -- well, in this instance you don't get to touch her hand, but touch his hand, see a smile, see the wrinkles in his face, you might say. It's the whole contact with another human being, familiar human being, a known human being.

The sensation is perfectly visible in the actions of a dog when he sees his master. All this is interposed into this establishment of this contact, a pane of dirty glass and a dim -- in my experience often a nonfunctional, nonfunctioning telephone -- I didn't get to test all the telephones over there, but if my experience in other places is any criteria, they don't work. A person goes in and shouts and the poor visitor stands up on his or her tiptoes and tries to see him. And he shouts and after a certain amount of frantic effort to establish a piece of communication, they just give it up.

Now, this, I think, is a very deleterious experience. This works against what the warden is trying to do. It works against what the state -- here you say the city -- what the city is trying to do. It works against what we are trying to do as a correctional philosophy. We want to handle these individuals who are going their way in such a manner as to get them to go one way. This doesn't contribute to that. This works in every way against that, because it breaks that very important human lifeline of contact and it breaks it because it makes it difficult to establish even visual contact. Some of these -- I didn't actually measure, but it looked to me as though those panes were very high. In many prisons they're so high that a short wife, many of the -- especially

Puerto Rican girls are quite short, they can't see in there at all. They have to get things to stand on, that sort of thing. I can't say that as a witness. I do not know it to be true but I suspect it.

THE COURT: The witness testified yesterday it was true in his case.

THE WITNESS: It's so often true that only in the antiquated old jails do you see that any more. They're being replaced in the modern jails, in the modern prisons. Not because somebody is so suddenly merciful saying oh, the poor prisoners ought to have a little joy in life. That is not the objective at all. It's purely selfish. It's important to maintain the contact with the outside world and maintain it not in a frustration like dangling a fragment of meat in front of a dog and jerking it away, but to maintain it in a way that he will think here is somebody that cares for me. It is important that I do the best I can to return to that individual and all the rest of it.

I don't mean to bring this out in a sentimental fashion but it is a sentimental matter in part because it is a sentimental union between the wife, the daughter, the son, the next door neighbor, whoever it is that thinks enough of this fellow, who already thinks he lost every friend in the world, or will lose every friend.

Take a man who has not been arrested before. He comes in here and says, "My gosh, I'm in the clink now, what will happen? My friends will avoid me and everything else." Now, it's quite a sensation when one of them comes to see you. And they have these curious artificial gadgets imposed to the establishment of a normal human life. If between me and the judge there were suddenly erected a barrier of that kind, what would he think? What would I think? What would everybody think? My goodness, am I a leper, am I -- what am I? Do you have to have all this protection? The judge would have to have all this protection.

Well, I was very unpleasantly affected by seeing this and by hearing from the deputy warden, I believe it was, that the prisoners' relatives often have to stand out in the rain and outdoors awaiting a chance to even come in the front door, and continue to stand there in line, which -- I don't know, personally I'm so allergic to having to stand in line that this seems like terrible punishment to me. Especially for a woman that has trudged quite a long way from the subway and the rest of it. Remember, this is -- this is a discomfort imposed upon a person I believe you don't even suspect of anything, namely the relatives.

Well, that's why it impressed me badly. But did I answer you, Judge?

THE COURT: I think I will want to have it refined further but I will leave it to Mr. Herman for the time being. I would like to have you at some point in your testimony let me know what you think the comparative damage emotionally is of this kind of visit with another. Now, you have indicated how bad you think this is. I'm interested not only in the absolutes of it but the comparisons because, after all, there's going to be some limitation on visiting. We can't have prisoners' families coming all day every day and sitting down and talking together.

THE WITNESS: That's right.

THE COURT: So the question is what the comparison is between this kind of system and what you consider to be a reasonable system allowing a reasonable emotional outlet.

THE WITNESS: Shall I answer that now?

MR. HERMAN: Sure.

THE WITNESS: I don't know why there is so much difficulty in the acceptance of the -- of simply plain, open visiting. Like I would visit anybody else. Like you would visit somebody in a psychiatric hospital. We used to -- I've been in psychiatric work a long, I know psychiatric hospitals somewhat better than I know prisons, but in the old days I remember the difficulties we put in the way of relatives. Now we want all the relatives we can get to come and see the

patient and give him every possible stepping-stone, you might say, back to a normal social adjustment. But in those days we put all kinds of obstacles.

In the first place, we made it difficult to come. Visiting hours were at a difficult time. Then we put them on a difficult day, when they had to get leave off to come, which many of them couldn't. And then when they came, we would allow them a short time. Then we would say it's very disturbing, very disturbing to your poor mother, brother, sister, or whatever it is, very disturbing to him and make that very short now.

And oftentimes we would bring the patient down to a so-called visiting room. We think of those things now as cruel, as unthinkable. A patient is -- needs all the help he can get and his -- from his relatives and everybody else to resume his commerce in life as a normal individual.

Among other things, we were afraid the relatives would bring in a gun. I can remember in my early days we held it over the students -- one instance in which a relative did bring a revolver in with some food that she wanted her husband to have. Well, we thought this was practically murder because don't you know he'll commit suicide, don't you know he might shoot up some of the other patients, don't you know all the terrible things? What a terrible thing for

you to do. I'm ashamed to think that we talked that way to a relative.

In the first place, it's our business to examine what the relative brought in. The relative may want -- might bring in a pet mouse or something. I don't know. The point is, what -- we've got perfectly good facilities for making an investigation of the material brought in and we know that a gift from an outsider is often the best thing that can be done to certain people.

Now, how much does this apply to prisoners? I didn't know until I saw open visiting practiced, as I have in recent years. I think the result is magnificent. I mean, the prisoner has a contact with -- a civilized contact. He can't leave but he can talk, he can ask questions, he can hold a wife's hand, he can have the advantage of tactile and visual and auditory -- reestablish contact in all these ways and I think the result has been magnificent.

We've used this for ten years. The diagnostic center I'm associated with, we've never had a single so-called bad consequence.

THE COURT: Where is that, Doctor?

THE WITNESS: It's mandatory in Kansas for all first offenders to be sent to a diagnostic center, which is essentially like a state jail.

THE COURT: Yes?

THE WITNESS: And they all stay there for at least sixty days.

THE COURT: And you have so-called contact visits?

THE WITNESS: Oh, yes. We just have a room about half as big as this or a third as big as this one. There's one member of the staff stays in the room all the time. But otherwise -- and, of course, they are searched before and afterwards.

THE COURT: The visitors or the prisoners or both?

THE WITNESS: I don't know. I don't remember. This is not such -- it's not a big thing there. I mean, it happens certain days and they have their visitations. I've been in the room myself several times. We just sit there and visit like anybody would in a hotel lobby or anywhere else.

In some places they interpose a table and they even put kind of a fence on the table so they can't pass things back and forth. We have very little of that. If you tell the relatives what they can't do, tell the prisoners what they can't do, that's that. We have very few violations of that. Nobody wants to give up a privilege like that.

BY MR. HERMAN:

Q Doctor, I would like to get back to the visiting booths at the Tombs for a second. Would enlarging the glass and in-

stalling a better phone make a significant difference in your opinion of those booths and the effect they might have on an inmate?

A I wouldn't quibble with you about what is significant. I think that is -- I think that's absurd -- an absurd solution. I mean making -- I can't give a good parallel but that is not what's the matter, the size of the glass, the size of the booths and so forth.

Yes, I have stepped into the booth over there. Just the very sensation of stepping in and being locked in there like -- if I may be permitted to mention it -- it's like some of the -- in the new modern airport toilets where in order to save space the toilets are so small that you can scarcely get into the booth and shut the door. At least not if you're my diameter, and it's a most unpleasant sensation being locked in there. It's almost as if you had to go to jail in order to perform the normal function of living. Because you're locked in a -- you can get claustrophobia very easily.

Well, now, I felt the same way when I was over there. I believe the prisoners are locked in during the interviews, aren't they?

Q Yes.

A It's inconceivable to me --

THE COURT: Have you seen other places where they

used phones where people are not locked in?

THE WITNESS: Yes yes. I have seen lots of prisons. There's every sort of variety I would say. Well, I asked one jailer in one of the western states, "Do those phones work?"

"Oh," he says, "About half the time."

"Well," I said, "that isn't very conducive to good morale, is it?"

He said, "Morale?" He said, "Do you think the commissioners care anything about anybody's morale? Prisoners or ours either?"

I said, "How does it affect you? You're just a guard." Well, he actually was a sheriff.

He said, "Listen, we try to take care of these guys and that's what they give us." And he said, "Who does it make trouble for?" He said, "Me." Well, you can imagine. But he said, "Do the architects ever ask us anything? No prison architect ever asked us sheriffs anything," or wardens, as you would say.

Q Dr. Menninger, you may have answered this in part already but could you discuss further the significance of a visitor being able to touch the prisoner, the prisoner being able to touch his visitor?

A Well, I mentioned it. I mentioned it. It means a great deal to babies, you know, to be touched by the mother

and most people all their lives retain that -- it's one of the most important assurances, you know, that there are other human beings in the world.

In fact, there's quite a recrudescence of it at the present time. You see the young college kids holding hands. What is that? That isn't a political gesture. That's a little gesture, a contact -- that the contact is there. A lot of us laughed at it or derided it for awhile but stop and think what it means. It's an insecurity which has to be made up in this way.

Well, now, these are free people. They can go and hold hands with a janitor if they want to, but we're talking about people that haven't got anybody with whom they can have any kind of contact. Contact is important. I mean, tactile assurance that there's a real world around me, a human world, a soft or a hard world, as the case may be.

MR. HERMAN: Your Honor, I have no further questions at this time. If you would like to ask anything further on that subject --

THE COURT: Well, not at the moment. Let's see what develops on cross examination. If I have any residual questions, I will put them.

BY MR. HERMAN:

Q Dr. Menninger, is physical exercise [illegible]

two hours a week adequate for an inmate who is kept in an institution like the Tombs?

A I shall have to ask the judge to construe "adequate".

THE COURT: I don't know, that really has to be defined by Mr. Herman, what he's trying to bring out. Adequate for what purpose.

Q Is it adequate for the purposes of a man's physical health and mental health?

A Well, you can get by with it. There would be a different opinion as to what is the optimum amount of physical exercise. Some men get none. Some people exercise every day. But I would say that some exercise is certainly necessary, and I don't think it's just a question of measuring the amount of exercise as considering that to be a part of the program. It should be proportionate, though. And what the exercise is. If the exercise is walking outside, walking in the yard back and forth, that is one kind of exercise. Another kind of exercise might be throwing a basketball around or something of that kind.

THE COURT: In this connection, Doctor, you are aware, of course, that the Tombs, like most city prisons, I suppose, is absolutely devoid of external facilities?

THE WITNESS: Yes.

THE COURT: With the exception of the roof.

THE WITNESS: Yes.

THE COURT: Bearing that in mind, do you have any observations about whether the need for exercise is influenced by the confining situation that exists? Do you need more exercise under those circumstances? Do you at least need some where you might not otherwise? I'm not trying to lead you but these things do occur to me and I'm very much interested in your reaction to those questions.

THE WITNESS: As I understand it, your objective is merely to -- you are talking about some individuals who are merely being detained until it can be ascertained if they were guilty of something?

THE COURT: Right.

THE WITNESS: Well, then I think merely, shall we say normal, or customary distribution or pattern of life activities, as nearly -- nobody's pattern is the same, as I just said, but nearly everybody's pattern includes some physical activity. If you don't get any, you get various physiological and psychological results, and I agree with the Judge, that if -- I have to consider that you have just got one opportunity and that's on the roof. Well, I think it's important to have it. You know -- may I -- will the Judge permit me to relate another psychiatric parallel?

THE COURT: I'll be very interested.

THE WITNESS: The Boston Psychiatric Hospital where I began, in connection with Harvard, is a famous place, supposed to be the model institution for the care of psychiatric patients once. I very well remember when we began to be unhappy about the fact that there was no place for the patients to have any exercise.

We went all through these things with our patients. Well, they said there is a place where they can have physical exercise, up on the roof. Well, as the Judge just said, that was shocking to many members of the staff, who felt that the roof should be reserved for teas or receptions and other things when a visiting board or governor or somebody came and we should be able to take him up on the roof and have little social amenities.

Well, the sentiment for some kind of physical exercise got so strong that we gave up the tearoom and dance hall idea and the roof was turned into a place where there could be regular physical exercise, so important did we think it was. Now, it would be an act of -- it would be an act of stupidity, if not worse, for an architect to plan a hospital without exercise places, and lots of it. I would say the same applied to the people who are not yet sick but easily could become sick.

BY MR. HERMAN:

Doctor, what affect can it have mentally or physically on a person who is denied physical activity, physical exercise?

A Well, for some people it doesn't seem to have any affect.

MR. KRANIS: Your Honor, I don't believe there's any indication that there's a denial of physical exercise, and on that basis I would suggest that the question is irrelevant to the issue before the court. The question is a sufficiency --

THE COURT: I think the question is a question of defining terms. I'm aware that there is not an absolute denial and I think for the purposes of discussion, Doctor, we can think in terms of an hour or two a week and denial to that extent is what you mean, isn't it, Mr. Herman?

MR. HERMAN: If the plans are carried through, it would be two hours a week. At present, since September, there has been no physical exercise in the Tombs for the people that have been there since September.

THE COURT: Let's ask the question on both assumptions and whatever eventuates we'll have the doctor's views.

Doctor --

THE COURT: Let's talk first about the absolute denial of exercise, Doctor.

THE WITNESS: Of course, many people are denied exercise and many people deny themselves exercise of any kind. But I think my profession considers it almost part of its ten commandments to say that everyone should have some exercise daily. I don't know that one could -- I mean, I don't think I'm competent to say why that is a basic rule of hygiene other than that which is known to everybody, that most people feel more comfortable if they can have some exercise and stretch their muscles and so forth.

THE COURT: Let me ask you this. We all are aware of the fact that inmates in the Tombs are confined in every sense of the word. The building has practically no openings, they're in their cells sixteen hours a day, and even when they're out of their cells they're in a relatively confined atmosphere. In that situation, does the availability or non-availability of exercise take on any added importance? It would seem to me as a layman it might, just to work off steam.

THE WITNESS: I think so, too.

THE COURT: Is there any validity to that view?

THE WITNESS: It would certainly increase the ability of freedom to move about, just to start out with. Then it's moving about par excellence, the exercise, isn't it? Moving about vigorously and energetically. I think that, too. I think the very fact that they're confined so much of the time

makes it more necessary. Doesn't the public school system assume that every child must have so much exercise a day? Twice a day? Isn't that required in most cities?

THE COURT: I suppose so. Certainly a certain amount a day, I would say.

BY MR. HERMAN:

Q Dr. Menninger, how important is the amount of space that somebody has to perform or to engage in exercise, how significant is the amount of space which a person has to exercise in in terms of accomplishing the purposes which you have stated, you know, the exercise serves?

A I don't believe my --

MR. KRANIS: I didn't hear the response.

A I couldn't hear him.

MR. KRANIS: I was going to suggest a few minutes earlier Dr. Menninger indicated that he, himself, didn't think he was qualified as an expert other than what the general normal individual might know about exercise and it seems to me that the form of the question was asking for an expert's opinion.

THE COURT: Well, I think the doctor is just about to say he didn't believe he was competent to give an expert opinion on the question he was asked, is that right, Doctor?

THE WITNESS: Yes.

Q Dr. Menninger, is playing chess or checkers or attending a class or making arts and crafts a valid substitute for physical exercise?

THE COURT: In a jail situation?

Q In a jail situation.

A It's a -- substitute for one value of the exercise but not for the others. It's a substitute value in that it occupies the individual so that he isn't vacant minded and bored and staring at the ceiling or at his stomach, but it's not a substitute for flexing the muscles and so forth, or moving about. For some people it's no substitute at all. They can't comprehend it.

Q Dr. Menninger, in your opinion, is it important for inmates to be able to see outdoors, to see sunlight or the street?

A I'd make my answer to that question dependent upon the statement that it is important for them to keep as well oriented as possible to the world. It's so easy for all of us to get encapsulated in our own little office or professional group or something, and a window in the room keeps the prisoner aware of the fact that this isn't the end of the road, this isn't -- there is still a world there, there is still a place where he might go under certain circumstances. And, I think the increasing sensory deprivation that you talked about be-

fore, you see, we're now well aware that if you blind a person and cover up their ears or make loud sounds so that he can hear nothing intelligible and perhaps place cotton all around him, so that you can deprive him of all sensory stimuli whatever, that you can produce very serious psychological effects.

Now, this is just a part of it. You shut out the light, or you shut out the various ways in which a person is kept current with the rest of the universe, at least a little bit. And I think all those things are deleterious. I don't mean that absolutely a man could not be in prison for a while without a window and be thereby, and only thereby, ruined for life. But that's one of the various factors that contribute to the increasing alienation of the imprisoned individual. And alienation is not only the greatest mortal sin, I believe, according to the theologians, it's the greatest psychological sin because the object of life in a sense is a continued relationship with other human beings. Things that impair your information about that or your orientation about that impair your adjustment. It's a kind of generalization of psychiatric theory.

MR. PFAFF: I have no further questions.

THE COURT: I would like to ask you, Doctor, how many times have you visited the Tombs.

THE WITNESS: Just once.

THE COURT: I see. Would you estimate how many other jails and prisons you have visited?

THE WITNESS: A hundred fifty or two hundred.

MR. KRANIS: I'm sorry?

THE COURT: A hundred fifty or so.

Do you find the Tombs -- it's an ugly name, but that's what we all call it -- to be significantly different from other similar facilities that you have visited? I suppose it's pretty much the same as some and different than others, but do you care to make any observation on that question?

THE WITNESS: I would say, of course, it's larger than most.

THE COURT: Yes, I suppose it's one of the largest if not the largest.

THE WITNESS: And it's more crowded than most, not more than any, but more crowded than most and larger.

THE COURT: Do you consider that those factors have any psychological effect on an inmate?

THE WITNESS: Oh, yes. I think all these correctional institutes we're planning for the future begin with the hypothesis -- what do you call it, the predication that it will not exceed a hundred fifty prisoners in its prison. In

Illinois, we hope Joliet will be replaced with half a dozen or more Institutes, as we were going to call them, to get away from the old terms, correctional places where there won't be so many of one kind of person, if I may -- one condition of mankind, to be taken care of by a few members of individuals in another condition. But there would be much more nearly a one to one relationship.

THE COURT: In your visit to the Tombs, is there any single condition or any combination of conditions which you observed which in your opinion, and for this you certainly are not only qualified but the qualified expert, would have seriously damaging psychological effects on the inmates?

THE WITNESS: May I look at my notes a moment, Judge?

THE COURT: Please.

THE WITNESS: I made a few notes at the time of my visit.

Your Honor, I have mentioned -- I believe I have mentioned four things. I would say the most striking -- I'm going to begin at another place. I would say I was not there long enough to become thoroughly acquainted with the -- with all the programming that is done. But from what I did see and what I heard here yesterday, I think the most damaging thing is programming -- is the idleness and the [illegible] and the non-programming, the fact that this is just a bin and you stay here

until we're -- we've used up -- until we're ready for you.

Well, that strikes me as particularly bad. It's as if the spirit of the place, was it, isn't very nice but we didn't invite you here but we've got to keep you and we'll try to keep you.

Now, there's none of the impersonableness of it goes along with that boredom and that idleness. The idleness and the boredom and all those things go together.

Now, the further alienating and isolating factor, I think, is that terrible visiting system. The visiting system strikes me as what little decency and humanity there is in the care of the prisoner is taken away when they're informed that their mother is downstairs. Oh, I don't know just how they do that, whether they are informed before they get there or what. But, anyway, that whole thing.

This seems to be accepted by them. This was shocking to me, I would say. Isolation, I wasn't shocked by and the boredom and the idleness because I have seen it so often and I know it's there and I don't think the average person knows how painful it is.

If you think of shutting yourself in your own bathroom for three weeks, say three weeks, not thirteen months, shut yourself in your own bathroom with or without a book to read. I don't know what the reading program is there. I was

informed once it didn't have magazines. Couldn't have. Then I was informed it could. I don't know how that is but I didn't see many around.

I heard that there was this library but I didn't hear what books were in it. But at most, those things are mild distractions if you're stewing under the apprehensiveness of a long wait until you find out where you are and where you are going to be.

Then the third thing I would say would be the noise. I think the noise is greater in this jail than any I ever visited. And I think that continuous noise -- that's quite subjective, though. Some of these discotheques drive me wild. I can't stand that. It's worse if you have a hearing aid, I can tell you that.

But the noise in that prison, in that jail, seems to me to be pretty much.

THE COURT: Let me ask you this. Of course, the question of noise is subjective and I'm in your class as far as loud noise of any kind, which apparently some people like. But we know that a great many people can be adversely affected by continuous noise. Is it equally true or true at all that a great many people can be adversely affected by excessive silence? Although I don't think that is any threat at the Tombs.

THE WITNESS: I don't either

THE COURT: In other words, do you believe there's any possibility of any inmate at the Tombs being psychologically damaged if they quieted the place down a little bit?

THE WITNESS: No, Judge, I don't. I counted as that chap was testifying yesterday --

MR. KRANIS: Excuse me a moment. I know the witness is referring to some notes and there's been no foundation laid as to what he is referring to.

THE COURT: I think he did mention for the record, and I think all that is necessary for him is to mention for the record is, that these are notes he took when he made the trip the day before through the Tombs, is that correct, Doctor?

MR.HERMAN: A couple of months ago.

THE COURT: Whenever it was.

THE WITNESS: I did on another page here. These notes I made when that chap Meade was testifying.

THE COURT: Was testifying yesterday. All right. And you are using them to refresh your recollection?

THE WITNESS: Yes, the cans and the radio and the T.V. going simultaneously. Once in awhile that used to happen in my house when my daughter was home. And it's pretty [illegible] in the house, even. Then those iron doors clanging and the people shouting from various parts. I heard that

myself. In fact, I was absolutely astonished that that young psychiatrist was able to bring into what appeared to be a very rather unstructured ward of psychiatric patients as much - I can't find the word -- I don't want to say serenity but as much --

THE COURT: Calm?

THE WITNESS: Well, relative calm. Here are disturbed patients. I was prepared for the worse. This was better than any place else that I visited. And partly I think due to him. Because I went with his nurse and went into the ward myself and so did my wife and while I wouldn't have thought that so crowded and so energetic a ward would be a good thing for psychiatrically potential psychiatric patients, it was working out better than I suspected. And then he began to tell me about some of the plans he had for them which impressed me as being thoughtful.

THE COURT: I take it you are referring to the special floor?

THE WITNESS: Seven, I think.

MR. HERMAN: Tenth floor, Dr. Teach's floor.

THE WITNESS: Yes, that's the one.

THE COURT: You said earlier in response to my question, Dr. Menninger, that there were four items, I think, that stuck out in your mind. You have mentioned about three.

The idleness of boredom, together with the impersonality, the visiting situation, the noise. Was there any other or have you covered the matters?

THE WITNESS: Did I cover the crowding? Crowded conditions?

THE COURT: Yes, right.

THE WITNESS: After you've been in fifteen minutes you're just -- accustom yourself to the -- you get into a frame of mind, well, this is a crowded place. Sometimes you go into the -- to an airport or some place, it's crowded. Another time it isn't. You just come in and say this is a crowded place, lots of people. You wonder, well, how are they being steered around and so forth.

THE COURT: In that regard, I recall an earlier witness testified as to the mental effect in his opinion of crowdedness, and I asked him whether it would be fair to state, as a result of what he had said, that his view was that no one could stand the horrible crowdedness, for example, of a subway at rush hour, for a certain period of time and hold yourself together, if that went on for a long period of time, it would have a serious effect. Would you agree --

MR. KRAUS: Your Honor, excuse me, please. May I interject? I believe that the question of overcrowding is a question which has been resolved by the parties and is no

longer an issue in the case.

THE COURT: I agree with you, Mr. Kranis, and I don't want to fail to credit the city for what it has done towards improving the conditions and committing itself to improve them. I think I have to get Dr. Menninger's view because I believe that the issues that remain before me are affected by the total situation, they're not all that I say.

Doctor, to answer my question, the city has committed itself to a very commendable program for reducing the population. It's now -- what is it, Mr. Kranis?

MR. KRANIS: We have gone down since the beginning of the trial from 146 per cent of population to approximately 117 per cent population.

THE COURT: I think we ought to talk in terms of absolutes.

MR. KRANIS: From a population of approximately 1400 at the end of October or beginning of November to a population which I believe is 1093 and by June we have committed ourselves to going down to a population of approximately 900.

THE COURT: Right.

When did you visit there, Doctor?

THE WITNESS: Oh, a month or so ago.

THE COURT: Would there have been about 1200 people there, then?

people, at numerous planning conferences and things of that kind where we have to decide what to do in Chicago with both our youth and our adults and the board -- I'm a member of the adult board and when we get together and discuss these things, it's a kind of testimony, you testify what you have seen.

THE COURT: I'm not concerned myself with whether it's testimony. It's an articulation of your views with regard to the detention facilities, is that right?

THE WITNESS: I'm afraid I have given an expression of my views a good deal, yes. Not in a suit.

BY MR. KRANIS:

Q Dr. Menninger, with respect to visiting, do you feel that all inmates should have a right to face-to-face contact visits?

A Now, by inmates, are you speaking about these detainees?

Q Yes.

THE COURT: We're talking only about them in this case.

Q Detainees, yes, sir.

A Well, I'm not a lawyer.

THE COURT: No, we're not talking about -- at least I don't suppose Mr. Kranis is asking you whether they have a legal right or not.

MR. KRANIS: No, no.

Q In your view, should all detainees, no matter what's the charge or what the background, have a right to face-to-face contact visits?

A Well, I'm confused by your word "right".

THE COURT: Why don't you say be afforded an opportunity.

Q Be afforded an opportunity for face-to-face contact visits.

A I don't think any absolute rules like that -- if I were a director, there would be no such absolute rules because there are exceptions -- there are some families where I don't care for them to have -- I wouldn't want them to see their relatives. I think it's deleterious for them to. I would want the officer in charge to tell me what is the family situation, if there's one, a social worker, whoever it is.

THE COURT: Well, I think that Mr. Kranis was directing his question towards another point and if he wasn't, I would like to. The real issue, at least the issue I have before me, is with regard to contact visits as distinct from noncontact visits, that is, the kind of visit that you prescribe for ordinary purposes anyway, as distinct from the kind of visit which is permitted at the Tombs. Now, assuming that any visit were to be made and we can understand that you

may feel in some situations the family relations are such that no visits should be made, but assuming a visit is to be made, would you believe that in all circumstances that should be a face-to-face contact visit?

THE WITNESS: I'd like to reserve the right to make exceptions as a director of the institute, whatever it is, the place. But I would say in general, yes.

THE COURT: Right.

BY MR. KRANIS:

Q What factors might you consider in making such exceptions?

A Now, my friend, I'm not a prison administrator and I haven't thought that question through. But I can imagine some. Do you want me to do some imagining?

Q I would appreciate that.

THE COURT: Sure.

A Well, let me think. I'm trying to remember that you have no way of -- to date that I know of -- of filtering out the aggressively mentally disturbed individuals who come in in this group.

Q There is a classification system in the institution and there is presently an ongoing --

MR. HEGAN: Objection, your honor.

THE COURT: To what? Let him assume there is.

There's no testifying. Assuming that there is a classification system.

Q Assuming that there is a classification system.

A And if the individual had been through there and been found by those people to be an excited, embittered, angry person, likely to strike or otherwise -- or strike at people, certainly I wouldn't approve of visiting privileges for him.

Q What factors might be necessary to determine whether or not an individual is excited and embittered?

A We just mentioned the diagnostics.

Q What would you have to go into, what material would have to be available in order to reach that conclusion? Would you need a full psychiatric examination, perhaps? Would you have to have the full knowledge of the history?

A Usually not. Any psychiatrist with any experience can detect those things without spending days and days and weeks and weeks, if that's what you mean.

Q Now, would you need to know something about the history of the individual?

A Oh, certainly. I'd know that. If a man was brought to my institution, I want the history.

Q Would you envision any problems insofar as gathering the necessary information?

A Yes, sir. You have problems with every case.

Q Might I ask you this. Would these problems be exacerbated in a situation in a detention facility as opposed to a facility with an enormous turnover in population?

THE COURT: You mean the detention facility?

Q The detention facility having an enormous turnover in population so that some inmates may only be there a matter of days on one extreme, other inmate may be there a year or more on another extreme, where the average inmate is there no longer than approximately thirty or thirty-five days. Would you envision any problem in gathering the necessary information to determine who should be eligible for face-to-face contact visits?

A Anybody that wouldn't envision some problems hasn't any experience at all with them.

Q What problems would you envision?

A Oh, recalcitrant relatives, lost relatives, family feuds that make it very difficult to ascertain where the truth lies and where the -- what the facts are about it. Conflicts between interested parties, like children and wives and children and parents and so forth. There's all kinds of things.

Q Dr. Menninger, would you also consider the security factor insofar as the overall institution is concerned, with particular reference to the possible passage of contraband

during a contact visit?

A Well, now, I'd consider it, sure, but I don't think that's the question you want to ask me.

Q How much weight would you give to the security factor before permitting a system of contact visits in an institution?

A I would arrange for some kind of examination, physical examination. I mean --

Q Would this be a physical examination of the inmate, detainee, or both the visitor and the detainee?

A Both. I mean, if I had any anxieties about it, I would. Just like hijackers on an airplane. We've suddenly got to run everybody through the X-ray thing, but last year that would have been thought silly. It might be that people would want to bring in guns and so forth. If that began to be the custom, I would certainly have that kind of examination. I really want to help you and not obstruct you and I'm not sure I'm with you yet.

Q Well, sir, let's assume you were an administrator of a detention facility, and if as an administrator you had to consider all of these factors, the personal history of the individual detainee and the security of the institution, and if you were desirous of setting up a system of face-to-face contacts, would you feel that you could set up such a system

overnight within a relatively short period of time or would you need a sufficient time to study all systems and come up with a system that would fit your particular institution and your problems?

A If I'd say overnight, you will say I'm an impulsive fool. If I say no, I would deliberate for a few months, you would say I'm a wise man. I don't want to answer a question like that.

THE COURT: It's obvious that you are, therefore, a wise man, Dr. Menninger.

But it seems to me, Mr. Kranis, the difficulty of that question is Dr. Menninger, even with his expertise doesn't pose as an expert on security questions. I would have to hear Commissioner Malcolm or somebody on that side of the story.

Q Dr. Menninger, I believe you indicated you visited the Manhattan House of Detention on one occasion, is that correct?

A In Chicago?

Q No, in New York City, the Manhattan House of Detention.

A Is that the Tombs?

Q The city doesn't like to call it the Tombs, they keep calling it the Manhattan House of Detention.

different ones, then, of course, don't be bound by the way the question was put.

A Well, yes. It seems to me that it's the only thing we know how to do with a few individuals. But, obviously, it's the most -- shows a poverty of resources if you get down to that. If you can't do -- you have got a difficult -- I'm an ex-cowboy. If you get down to having -- if you've got a difficulty with a horse, all you can do is lock him in the corral and that's pretty bad. There has to be somebody that can do something with him.

Q At the present time, is there an alternative?

A To incarceration?

Q Yes.

A I should say yes, many. But not for all individuals. The wardens say -- they've got a kind of a general agreement now, haven't they, that eighty per cent are unnecessarily confined, they say, in their institutions. There's some sort of statement like that been issued several times by the wardens.

Q At the time you observed the visiting facilities at the Manhattan House of Detention, was there an actual visiting session in process where detainees visiting were --

A No, no. I didn't see that.

Q So that you didn't have an opportunity to talk to any of the inmates immediately after their visiting experiences

to garner their reaction?

A No, sir.

THE COURT: Not that you are not entitled to your opinion without ever having observed such a situation, but have you ever observed such a situation in action at another facility where the actual conversations were occurring?

THE WITNESS: Oh, yes. You mean where they do visiting like this?

THE COURT: By glass and telephone, yes.

THE WITNESS: Yes, yes, but it's such a painful sight that I don't stay but a minute or two as a rule. It's a painful thing, your Honor.

THE COURT: I have observed it at the Tombs.

THE WITNESS: The -- These wistful, miserable people who are in there only because they don't have enough money to pay their bail, they're stuck in these places and experience what they have every night and every day, coming out of those sweaty, stench-ridden cells and they come down to see somebody that likes them enough to come and visit them, wants to make a good impression, and then have to go through that routine, it's pretty bad. I feel so sorry for them, so ashamed of myself that I get out of the room.

Q Dr. Menninger, I believe earlier when you were asked certain questions about exercise, you expressed an

Q Who told you about this?

A Some of the prisoners. They told me that they get "Glamour" and "Ladies Home Journal" and a number of other periodicals about four months after -- four to six months after they're issued.

Q Did you query the warden about this?

A No, sir. If it's like most wardens, he wouldn't know.

Q But you didn't question him about that?

THE COURT: I don't want secondhand reports. If there is any evidence, I want it firsthand.

A No.

Q You also testified as to the noise in the institution. Were your conclusions as to the noise in the institution based on your own personal knowledge?

A Well, I heard it. It's terrible.

THE COURT: And you're hard of hearing, aren't you?

THE WITNESS: Yes, But I could still hear it.

THE COURT: You could tell the difference, huh?

THE WITNESS: There's a certain jangling, you know, scrambled-eggs quality to the sound. You hear the doors and the voice and it isn't as if you just hear loud screaming.

Q Do you have any suggestions as to how that noise problem might be met?

other than this time and this other time?

A Yes, I have.

Q When was that?

A July 13, 1971, January, 1968.

THE COURT: I thought you told us both of those.

Q Well, the July, 1971, that was after your return to Florida?

A Right.

Q And before this incarceration?

A Right.

Q How long were you in the Tombs that time?

A Approximately three weeks.

Q Were you convicted of a crime at that time?

A Yes.

Q Were you sentenced?

A Yes.

Q Where did you serve the sentence?

A Riker's Island.

Q What was that crime?

A Fraudulently accosting.

Q What is your present cell location in the Tombs?

A Seventh floor, lower C4.

Q Can you tell me during the winter months that you spent in the Tombs this year what has been the condition

of heat or cold in the cell area?

A Well, the weather, or the cell area in the Winter, when the heat is cut off the windows can't be opened because like one person might get too cold for him, like I sleep on the lowers, I like on the lower tier, and it's relatively warm down there, but if the heat builds up, it gets stuffy, but they open the windows upstairs, somebody gets cold on the top tier. This is in the Winter.

Q What is it like in the summer?

A Well, in the summer it's just hot all over. With the windows open.

Q During the past summer that you have been in the Tombs, were there any fans on your housing floor?

A Yes, there were fans and they were located out in the bridge, on the officers' bridge, and if they were on, they were -- they weren't felt for people, you know, in the locked areas.

MR. KRANIS: Your Honor, is the witness testifying on behalf of himself or on behalf of everybody in the institution? There's no foundation that what he is saying, for example, the witness testified that he's housed on a lower tier and then gave some further testimony about what took place on the upper tier, there was no foundation laid for that testimony, nor has there been any foundation laid for

what other inmates feel with respect to the fans. His testimony should apply to him.

THE COURT: I will overrule the objection. You can bring out whatever you want on cross examination. Go ahead.

THE WITNESS: Your Honor, I slept on a top tier, also.

THE COURT: We're not going to find anybody who has slept in everybed in the Tombs, I realize that, and we're not going to find anybody who has spent his whole life in the Tombs. We're only going to get as much received as is available and you can bring out the evidence on its weight on cross examination.

Q Have you ever been in the Tombs during the summer at a time when the windows on your floor could open, were opened?

A Yes.

Q Did these windows provide ventilation in the cell areas or the lockout areas when they were open in the summer?

A Well, in the summertime when it's real hot, say for instance it's a 90 degree temperature outside, well, it's at least a hundred or better inside.

THE COURT: Even with the windows open, you mean?

THE WITNESS: When they're open.

THE COURT: Does the heat vary as far as, you know,

from floor to floor, i. it hotter in the upper floors and cooler in the lower floors?

THE WITNESS: I imagine it would, your Honor.

THE COURT: You haven't tried to check that out, I take it?

THE WITNESS: Well, I've been on the lowest floor that a detainee can be on and it's the same.

THE COURT: What is that floor?

THE WITNESS: It's the fourth floor.

THE COURT: It's just as warm there as it was on the seventh?

THE WITNESS: Right.

BY MRS SHAPIRO:

Q Mr. Robinson, at the time you were in the Tombs in 1968 to 1970, can you describe what the commissary procedure was?

A The commissary procedure at that time was --

THE COURT: This is what time, now?

MRS. SHAPIRO: 1968 to '70.

A It was a movement from the floor to the commissary, the eleventh floor, I believe it was. Every day it was commissary, at least four times a week.

Q What is the system now?

MR. KRANIS: Your Honor, may I approach the Bench

regular rounds and on the floor where prisoners are especially housed for problems of mental disturbance, they can pass by on more frequent rounds, as they do, or have the assistance of suicide aids, which was also recommended by the Board of Correction, to use inmates to engage these suicidal risks in conversation or in more constant observation, and you still can't avoid or prevent a person from taking his life in that kind of a cage, because he only needs a minute to do it, and they wait for that minute to do it.

Now, what you also have to understand is that there are a number of suicide attempts that correction officers prevent, and with frequent courage and heroism involved, and mouth to mouth resuscitation has saved the life of many inmates that I can recall just sitting here. But that has not been able, with all of those efforts, haven't yet been able to overcome what is the primary concern of all of us, the physical disadvantage of a building like the Tombs.

Q Mr. vandenHeuvel, assuming that the department did put the people they recognized as suicide risks in a special area, would there be any suicide related problem in allowing inmates to lock in a cell individually during the day when the other inmates were locked out?

A In other areas of the prison?

Q In other areas, not in the area where the suicide

prone inmates were being housed.

A That's a complicated administrative decision and there might be factors that would influence my judgment if they were argued with me. From my own observation, I have strenuously argued and believed that the lockout policy should be made more flexible, and that administratively it could be done, and I think if you do isolate the behaviorial and mentally disturbed problems that specific inmates represent, that you should be able, in other floors of the institution, to be more flexible in terms of the freedom of movement permitted inmates.

The Tombs is a building that was constructed during the depression and the person who was its architect must have been in a very deep one because it represents no progressive thought. It wasn't available to the architects of the Middle Ages.

It is a building where, at the time of the riots, as you know, your Honor, there were three adults housed in these cages five and a half by eight. Today we take some solace that that has been reduced, so that in most of those cages only two adults are housed and in the department has made determined efforts to see that only one person has been housed.

THE COURT: Yes, they have accepted a proposed order

Q In the county jail, do they have a classification system whereby they --

A Yes.

Q Do you know how many --

THE COURT: Wait a minute. You both know what the omitted words were but I don't.

Q -- whereby they classified people who are suicide risks or mentally disturbed?

A Yes.

Q Do you know what the suicide rate in that jail has been?

A If it is relevant, and I'm not sure that it is because the numbers you are dealing with are so exceptionally different, I think there's not more than three hundred prisoners in the entire county system in St. Louis. What they have done there is extraordinary in terms of classification and examination, and they have successfully prevented suicides since the institution of that classification system which, I think, was in '68.

Much of our problem in New York City is obviously related to numbers. You're dealing here not only with the largest volume of any urban prison system in the world, you are also dealing with so many other social problems that are represented by the individuals who come within your custody.

and participate to a certain degree, and my hope and expectation is that you can invite a much larger degree of participation.

Now, in a sentence institution that clearly is true. I mean, we have many examples in the country where prisoners play a much larger role in the responsibility and administration of the prison where they are housed. Walla Walla, Washington, is a classic example. In this state, they have done practically nothing in terms of that direction, but in the city prisons, as you know, we only house prisoners less than a year under sentence and the average term, I think, is less than three months.

So, it's not easy to administer an operation that builds up a prisoner responsibility and participation, given that mobility.

Q Mr. vandenHeuvel, within the basic physical confines of the Tombs, do you believe it is possible to provide daily physical exercise for the inmates?

A I do. In that the department has made a major effort to make recreation space available. One of our fifty-one recommendations in February, of 1971, was to open the roof for recreation, which had been closed for three years up to that point, because of a failure to repair the roof. That roof has been available and I understand the basement of

the building is now being prepared for recreation.

I was impressed by a visit to the Federal House of Detention on West Street sometime ago, where the warden there have creatively had made available exercise machines, and recently when I was in a gym I noticed that there were new machines available where you could do all kinds of exercise on an instrument that took very little space. But that really could give you a very good workout and I asked the director of the gymnasium for literature relating to that machinery and I sent it to the warden of the Tombs and recommended to him that he look into the possibility of that kind of equipment being made available on every floor in that the Board, if we could, would be helpful to him in securing it.

Q Do you know, Mr. vandenHeuvel, whether in detention facilities in Manhattan other than the Tombs there are any transparent windows?

A Well, there is no other detention facility.

Q I don't mean in Manhattan, I mean New York City.

A My recollection is yes. As I recall, the Bronx and the Brooklyn House of Detention -- I mean the question was never really focused when I visited those institutions, but certainly the windows are open, for one thing, and secondly,

of fresh air and sunlight. My impression is that they were transparent windows.

Q Do you know of any security reason which would prevent the installation of transparent windows on the housing floors in the Tombs?

A I don't.

Q Do you know of any other considerations, such as inmate privacy, which would prevent the installation of transparent windows in the Tombs?

A But for a voyeur and a hovering helicopter, I think it would be difficult for anybody to invadethe privacy of anybody living in the Tombs.

Q Mr. vandenHeuvel, would you state for the record what Plaintiff's Exhibit 13 for identification is?

A It's a report on the visiting system in the New York City prison system, prepared by the Board of Correction and submitted to the commissioner, not made public, but submitted to the commissioner in 1972, and there's no date on this. I'm not sure what the date is.

MRS. SHAPIRO: I would like to offer this report in evidence.

THE COURT: Received.

(Plaintiff's Exhibit 13 received in evidence.)

THE COURT: This report may be of more importance

Prison Death Review Board, we undertook a responsibility to study the floor, to involve architects and others, other experts, to come up with a series of recommendations whereby that floor could be reorganized to better accomplish its function.

THE COURT: Will this be relevant if the medical questions are isolated out?

BY MRS. SHAPIRO:

Q Mr. vanden Heuvel, does this report cover noise problems?

A Yes.

Q Is this the report you referred to before?

A Yes.

MRS. SHAPIRO: This is being offered with respect to the noise situation.

MR. KRANIS: May I make a suggestion, your Honor, with respect to the introduction of this document into evidence? I didn't read the entire document but I have seen it and, as I recall it, one portion of it relates to the question of noise, and if I may suggest, and it is a portion that can be extracted from the whole, may I suggest that that portion be offered in evidence at this time?

THE COURT: For all practical purposes, it seems to me that is what you are offering, is that right?

MRS. SHAPIRO: Yes.

THE COURT: I will consider only the section relating to noise. Is it clearly identifiable?

MR. KRANIS: Yes, it is.

THE COURT: I promise not to read the rest.

(Plaintiff's Exhibit 12 received in evidence.)

BY MRS. SHAPIRO:

Q Mr. vandenHeuvel, in the study of noise, can you describe for the court what floors in the prison the noise was measured on?

A I think the study focused on the eighth and tenth floor.

THE COURT: This study we've been talking about?

THE WITNESS: Yes.

Q And, can you describe the method by which the noise was studied?

A The noise control experts of the Department of Environmental Resources were asked to conduct a study for us and did so.

Q Do you know whether they used a noise meter or some other kind of instrument to measure the noise?

A They used the most sophisticated instruments available to contemporary society to measure the noise volume in that institution.

THE COURT: Are these details referred to in the report?

THE WITNESS: Yes.

Can you state in general what the results of their study were with regard to noise?

A Well, it confirmed my auditory observation that the noise levels in the prisons are such that it has to affect the mental balance of anyone who is spending any considerable amount of time there. I'm as concerned for the correctional personnel as I am for the inmates. The acoustical problem of the prison is exacerbated by the decision of that heroic generation of builders who were more concerned by the visual impact of the building than by how it was going to serve those who were housed in it, so that almost every acoustical advantage that could be available to lessen or deaden the sound was removed and you have steel hitting concrete, hitting solid walls and the cacophony of it is such that it has to be truly destructive to any orientation to institutional life.

THE COURT: Do you want to say it has to be heard to be believed?

THE WITNESS: It has to be heard to be believed. Added to all of that, of course, is the television playing against that steel and concrete and radios and a loudspeaker system and the yelling of prisoners who are communicating

through blank walls, and the metal utensils, trays, et cetera, cups, that are used for eating, plus the not infrequent pounding of a person's head against the bars voluntarily as he finally confronts the disgrace of his existence, all of that put together creates an environment of sound that to me is unacceptable at any level. That observation was confirmed by this study, which I think while standing on the bridge of the eighth floor these experts found that the noise volume was at least that of the New York City subway system at its rush hour.

Q Mrs. vandenHeuvel, does the report contain recommendations for dealing with the noise problem in the Tombs?

A It does in terms of the specifications of the tenth floor. What our objective is is to try to work with the department and others to really create a floor that is different in terms of housing problems. I know the department has done a great deal on its own initiative. They have plans and have approved plans with the Department of the Budget for other floors in the building, and frequently -

THE COURT: As to noise control, you mean, or what?

THE WITNESS: I presume their alteration plans for those floors include some consideration of noise control but I don't know that. Ours does, and it involves, for example, cutting into some of the cell structures so that the television

is going to be made available in confined quarters that can be closed, using a different kind of paint on the walls that has an acoustical quality of absorbing sound.

THE COURT: I don't know if it is feasible at the Tombs because of the difficulty of architectural arrangement, but you mentioned having visited the West Street Detention Center, which is the federal facility here, where they have television but it's available by earplugs individually so you don't have the noise involved from that.

THE WITNESS: Right.

THE COURT: Indeed, that's a relatively, it seemed to me, quiet facility.

THE WITNESS: Yes. And in most of the state facilities they have earplugs in the cells where the prisoner has access to two or three radio channels, and we're looking into that possibility and that's one of the alternatives that may be available. Again, you are dealing with the structural deficiencies of that building, whether or not it's possible or not --

THE COURT: And money.

THE WITNESS: And money.

BY MRS. SHAPIRO:

Q Mr. vandenHeuvel, you stated that the recommendations concerning noise control were directed mainly at the tenth

floor --

A Yes.

Q -- in this report. Would you say that these recommendations are applicable to other floors in the Tombs as well as to the tenth floor?

A Certainly.

MRS. SHAPIRO: I have no further questions, your Honor.

THE COURT: Shall we give Mr. vandenHeuvel a little recess? We will take a short break.

(Recess)

WILLIAM VANDEN HEUVEL, resumed.

CROSS EXAMINATION

BY MR. KRANIS:

Q Mr. vandenHeuvel, I believe you testified as to the desirability of optional lockout, at least with respect to a certain segment of the inmate population, the detainee population. Have you given any thought as to how the department would decide which inmates are to be afforded optional lockout and which inmates are not?

A I would think that those on the mentally disturbed floor might be handled differently and handled in terms of the individual problems that they represent, and that you would have available to the correctional personnel mental

of fresh air and sunlight. My impression is that they were transparent windows.

Q Do you know of any security reason which would prevent the installation of transparent windows on the housing floors in the Tombs?

A I don't.

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MRS. SHAPIRO: I would like to offer this report in evidence.

THE COURT: Received.

(Plaintiff's Exhibit 13 received in evidence.)

THE COURT: This report may be of more importance

than some of the others, Mr. vandenHeuvel, because this is one of the major issues which remains in this litigation, as you probably know, and I'm sure you share my pleasure in knowing, if you do, that a great many of the issues have been settled.

THE WITNESS: Yes.

THE COURT: So I would like with a little more depth this, Mrs. Shapiro, by your questioning or by a narrative from Mr. vandenHeuvel, just how this report was prepared, who did the investigation and so on.

Q Would you please state how the information concerning the New York City correctional facility --

A This was a staff study done for the Board of Correction.

THE COURT: Your staff?

THE WITNESS: The Board of Correction staff study, under the direction of our executive director, John Brickman, and with the assistance of Sally Holwett, and several others, staff assistants, including law students who spent the better part of two months investigating the visiting procedures and problems in the various institutions.

Q During the course --

A Not full time, but I mean that study took place over a period of two months.

Q During the course of this study, did the staff members speak to inmates and/or to visitors at these institutions?

A Yes. They talked to everyone involved with the visiting problem, from the heads of the institution to the senior officers, to correction officers, the inmates and the families.

Q In connection with the study, do you know whether any survey was made as to visiting in other detention institutions in other cities?

A Yes, there was. By both telephone and by visit to some of the nearby jurisdictions, in New Jersey and in Pennsylvania, but generally speaking, the conclusions or the observations that we state that relate to other prison systems were done by telephone discussion.

Q As a result of your study, did you determine the percentage of inmates who ordinarily received visits in New York City correctional institutions?

MR. KRANIS: I'm sorry, I didn't hear the question.

THE COURT: The question was whether the Board, as a result of the studies, determined the percentage of inmates in the city prisons who have visitors.

I guess you mean per week or something?

A As I recall our conclusion, I think that over half

of the prisoners in the New York City prison system received no visitors. Now, in part that reflects the enormous transient quality of the prison population, but I am unhappy to recall large numbers of prisonerswho were detained for months and well over a year in some circumstances who never had received a visitor.

Did you study the factors which you thought led to the fact that many inmates didn't receive visits?

THE COURT: What's the relevance of that? I have a problem about what ought to be done when people do visit but not when they don't.

MRS. SHAPIRO: That has to do with the visiting hours and schedules.

THE COURT: I see. All right.

Q Do you know or can you state what the visiting schedule hours are at the Manhattan House of Detention?

A Whether the report has up-to-date information on that, I don't know. My recollection of it is that the visiting hours are now twice a week for a prisoner indetention. Monday, Tuesday, Thursday and Friday are the evenings of detention visits.

Q I would just like to refer to the visiting hours or perhaps we can agree that they're from 4:30 to 7:30 on weekdays.

MR. KRANIS: We can, but they're a bit more extensive than that.

MRS. SHAPIRO: For detention inmates?

MR. KRANIS: Mr. vandenHeuvel has indicated while it is true that general visiting is two days a week, I believe Monday, Tuesday, Thursday and Friday for detainees, we also have visiting on Wednesday for children.

THE WITNESS: Yes, and on Saturday for the sentencing. I was going to say that.

THE COURT: But you're talking of the time of day?

MRS. SHAPIRO: We're talking of the time of day.

THE COURT: That's 4:30 to 7:30?

MRS. SHAPIRO: 4:30 to 7:30.

THE COURT: Is it also 4:30 to 7:30 on Saturday?

MRS. SHAPIRO: We're not talking about the detention inmates.

THE COURT: We're not talking about the sentence inmates.

Q Mr. vandenHeuvel, in the course of your study, did you come to any conclusions about the desirability of having visiting hours at this time of day, 4:30 to 7:30, of restricting them to this time of day?

A Yes, I think it would be helpful from the morale and personal purposes of the inmates to be able to be more

flexible in visiting hours. I think we have to recall that the overwhelming number of inmates represent the poor of this city and their families are handicapped by poverty and generally are working people and live in areas that are distant from the Tombs. They don't have governesses and nurses available and babysitters to take care of children.

THE COURT: Does anybody these days?

THE WITNESS: No one else does, but those who had them are not in the Tombs. That's another problem which would bring about the quickest reform we could hope for if we could get some of them to be in the Tombs.

So that is a problem for working people, and it's unfortunate in my judgment, for example, that though we haven't been able to schedule weekend visits for prisoners, detainees, because, obviously, many families would find it more possible to make that excursion to the Tombs at that time. I don't underestimate the problems the department faces in terms of personnel management that's related to the visiting question.

THE COURT: I was going to ask about that. Obviously, you have personnel there on Saturdays and Sundays. Do you have the same number of personnel?

THE WITNESS: No. And that's unfortunate because --

THE COURT: Is there a premium paid for working on

Saturday or Sunday or is it just a question of trying to reduce the number as much as possible for the convenience of the employees?

THE WITNESS: Of course, I am always so startled by the pay that is involved in all of these areas, that when you ask is there a premium paid, I guess there is a ten per cent premium paid after six o'clock in terms of overtime.

THE COURT: I was thinking of weekend work.

THE WITNESS: On weekends, I'm not sure whether that is regarded as overtime differentiation.

Unfortunately, the City of New York, to hire a correction officer twenty-one years of age with no prior experience and with a high school equivalency education, requires a budget line commitment of $22,000, which to me is somewhat startling. That includes a starting pay of $11,500, which goes to $14,500 within three years. Unlimited sick leave, annuity and significant pension payments, four weeks paid vacation in the first year plus eleven paid holidays, so that you have almost forty paid days off. And uniform allowance, unlimited overtime essentially, which is not included in the $22,000 item, and a ten per cent differentiation for overtime after six o'clock.

So when the city confronts the problem of additional personnel in terms of its institution, it is a horrendous budg-

etary problem that can't be underestimated. And, therefore, I am constantly urging the department to find personnel alternatives, either in terms of volunteers or in terms of prisoner inmate use that can supplement or fill a vacuum because of our incapacity to hire outside regular civilian personnel.

Q Mr. vandenHeuvel, speaking still about the 4:30 to 7:30 visiting hours, for wives who have children in school, would some other time of day be more convenient?

A I'm sure it would be.

THE COURT: I think I'm just as much as an expert on that as Mr. vandenHeuvel.

Q In the survey that was done in preparation of this report, were the visiting schedules of other city detention institutions studied?

A Yes.

Q Were they more or less restrictive in terms of the hours of visiting than New York City?

A Pretty much the same. Only in one institution, the branch Queens House of Detention, which is the oldest physical facility in the Department of Correction, and in many ways the best, which relates again to the inmate population size, I think, and the attitude engendered by the commanding officers, in that institution inmates have four visits a

week.

THE COURT: Where is that located in Queens?

THE WITNESS: It's in Long Island City.

THE COURT: The main facility is --

THE WITNESS: Kew Gardens.

THE COURT: Yes.

Q I would like to direct your attention to the survey of facilities in other cities, detention facilities in other cities.

A I can't contribute much more than what is in that report.

Q Would you refresh your recollection on page seventeen?

THE COURT: Yes, it probably will but, you know, Mrs. Shapiro, there is no point in Mr. vandenHeuven spending his valuable time parroting the report. Unless something special occurs to him that's not absolutely stated there. Both sides can be sure I will read the report with great interest.

THE WITNESS: Right.

Q Mr. vandenHeuvel --

A If I may, let me just make an observation. I deeply believe that the role of a detention institution has to be clearly focused by those who have the administrative responsibility for it. These are citizens not yet proven guilty of

the charges for which they have been arrested who are being held for a variety of legal, constitutional, valid reasons. The obligation of those who have their custody, it seems to me, is to make available to those citizens every possible means by which they can prove their innocence or resolve the charges against them or maintain the personal and family contacts that are part of their rights of citizenship.

Therefore, the detention facility should be so organized so that a premium is given, for example, to lawyer-accessibility to client, which is another problem of deep concern to the Board of Correction. To family accessibility to the inmate.

Now, the department has, in terms of that objective, installed phones, for example, on each of the cellblocks. We are the only prison system that I know of in the nation that has that. And it makes an extraordinary difference in terms of permitting a person to remain in contact with those who can help him, whether it's securing bail or just finding out how his children are, et cetera. To that end, I would hope the department would be as flexible as humanly possible to make visiting arrangements available to the inmates of the detention facilities.

Q Mr. van Heuvel, if there were an adequate classification system in the Tombs, do you believe that it would be

possible to have contact visits or at least some portion of the detention inmates --

THE COURT: Mrs. Shapiro, I think that question needs to be refined because it assumes some kind of classification system that is feasible. So I think first you have to find out whether Mr. vandenHeuvel believes -- at least I'd be interested in hearing his views -- as to whether there can be a classification system evolved which would be such as to permit contact without undue security risks, in your opinion.

Is that all right?

MRS. SHAPIRO: Yes. I was just trying to establish if he thought there were any inmates for whom it would be possible and if he could find out who they were.

THE COURT: Knowing I'm interested in both questions, would you answer that to the best of your ability?

THE WITNESS: A detention facility should be organized in my judgment so that a major part of its resources are devoted to both ends of its relationship to an inmate. In other words, when that person comes into the institution, we would be well advised, in terms of making our prisons a useful part of controlling crime and violence in our community, to spend some time finding out who that person is, to discover whether he is an addict, to learn if he is mentally disturbed, to have some feeling for him if he is an adolescent in terms of

what his possibility and life-style is. To know something about his prior record, both of institutional behavior or just involvement with the criminal justice system.

That time is what I call classification time, and I think and hope that the department is moving in that direction. In they have undertaken a study with Dr. Mueller of N.Y.U. to advise them on classification. I think there's a great deal that can be done without formal academic acknowledgement of the possibility. I mean, I think there is a lot of common sense in it.

For example, we now take addicts and offer to them detoxification through methadone and house them separately while that is being done. That is classification. For those who are going through detoxification and who are addicts, clearly there are problems of their care and custody that relate to all the questions you are asking. The same is true of the mentally disturbed. The same is true of the adolescents. It should be true, it seems to me, in terms of crimes of violence as opposed to crimes that don't involve violence. That is perhaps a classification differential that should be made.

And in the attitude of correctional personnel in terms of detention and to my observation much of it is valid. That a detention facility is frequently much more turbulent in

terms of the problems it has to handle than a sentence institution, because a detainee is still concerned about whether he is going to be found guilty or innocent, he is unaware of what sentence is going to be imposed upon him, he has many traumatic wounds, perhaps, relating to the incident that involved his arrest. He is separated from his family without knowing frequently what their problems are or what he should be doing to help them.

So that there are obviously problems in the detention institution that are different than a sentence institution.

You still should be able to classify those within your custody in such a way to make available to them more normal contacts with their families and friends in my judgment.

BY MRS. SHAPIRO:

Q Do you believe that you could classify them so as to determine which inmates were suitable for contact visits as opposed to the visits in groups?

A Yes. You know, after all the security precautions that are already taken, I mean, the physical examination of the inmate before he goes to the visiting booth and when he comes back from the visiting booth, that in itself should be in normal security arrangements a sufficient safeguard for the institution in terms of its own protection.

THE COURT: Am I to understand prisoners are physically

examined before and after they go to the telephone visiting booths?

THE WITNESS: Yes.

THE COURT: Even though there is no physical contact?

THE WITNESS: Yes. Body search. I was impressed when I went to Greenhaven prison recently in an institution where many people are sentenced for life to see that there was no physical impediment to the contact between the prisoner and his family. And I think that's a rather new innovation, and I talked to the prison authorities at that point and they thought it was working very effectively.

Now, I know Commissioner Malcolm is as concerned about this problem as anyone. I mean, it was his personal intervention that made it possible for the children to visit their parents in the prison and I don't know of a prison system in the country that has permitted that, and in that he has designated some of his staff to visit other facilities to see how personal contact visits can be accomplished if possible.

I would say there are some prisons where you just can't allow it, at least in detention, and I would think there's a large number of them where you could prevent it.

My recollections, and I'm not certain of this, but it seems to me I went to the reformatory on Riker's Island

which is now in the process of being phased out or one of the institutions there where there was personal visits, where the visiting room was absolutely open and where the families came in and sat down at a table with the prisoner.

THE COURT: When you say there are some prisoners for whom you just can't allow it, would you specify what the various risks are? I can imagine some but I would like to hear it from you.

THE WITNESS: Among those risks I would think are some who are housed in mentally disturbed areas, for example.

THE COURT: Well --

THE WITNESS: Some who are having or who, you know, are having or who are involved in, and the reason for the presence in the prison, his deeply emotional prison altercation and assaultive behavior, and --

THE COURT: You're not contemplating then necessarily risks to the general security of the institution?

THE WITNESS: Yes, I would think that there are some criminals, and there will be a lot more of them if certain proposals now before the legislature are passed, where inmates face a hopeless future in terms of incarceration, might well take much greater risks in terms of escape, et cetera, that the correction people would just have to take a --

THE COURT: How about the contraband question, do

you have any views on that?

THE WITNESS: Given the body search, it seems to me that a reasonable security arrangement should be able to overcome that. I know that the San Quentin experience, in terms of George Jackson's death, has left correctional personnel deeply disturbed about that problem, but until we know the final circumstances of that event it seems to me that we shouldn't use it to preclude a rational, intelligent possibility in our system.

BY MRS. SHAPIRO:

Q Mr. vandenHeuvel, I would like to have you identify for the record Plaintiff's Exhibit 12 in evidence.

A This is a report from William vandenHeuvel, Chairman of the Board of Correction, to Benjamin Malcolm, Commissioner of the Department of Correction, and Gordon Chase, the Health Services Administrator, dated January 11, 1973, recommendations concerning the tenth floor of the Manhattan House of Detention.

MRS. SHAPIRO: I would like to offer this in evidence.

THE COURT: What's the subject, general subject matter? I'm asking the witness.

THE WITNESS: The subject matter is what I made reference to before, the Board of Correction's concern about the physical arrangements relating to the care and custody of mentally disturbed prisoners, and at the designation of the

floor --

A Yes.

Q -- in this report. Would you say that these recommendations are applicable to other floors in the Tombs as well as to the tenth floor?

A Certainly.

MRS. SHAPIRO: I have no further questions, your Honor.

THE COURT: Shall we give Mr. vandenHeuvel a little recess? We will take a short break.

(Recess)

W I L L I A M V A N D E N H E U V E L, resumed.

CROSS EXAMINATION

BY MR. KRANIS:

Q Mr. vandenHeuvel, I believe you testified as to the desirability of optional lockout, at least with respect to a certain segment of the inmate population, the detainee population. Have you given any thought as to how the department would decide which inmates are to be afforded optional lockout and which inmates are not?

A I would think that those on the mentally disturbed floor might be handled differently and handled in terms of the individual problems that they represent, and that you would have available to the correctional personnel mental

health workers and others who could help you in the determination of what flexibility was possible.

I think certainly that those who were accused of misdemeanors certainly should be given much broader flexibility. I would think that after a person has been in the institution for a period of time you have an opportunity to evaluate his behavior and what disciplinary problems you might have with him, and that you could very well house prisoners who have been there for more than ninety days in such a way so that they had optimum flexibility. And for those who were under special observation or should be because of the nature of their crimes or for other reasons, you handle it differently. I just don't think that when you are dealing with individuals in cages that your whole effort should be to maximize the freedom of movement responsibly.

Q Are you familiar with the percentage of the population of the Manhattan House of Detention which is made up of misdemeanors or alleged misdemeanors?

A Yes, I'm also familiar with the fact that 940,000 people were arrested on felony charges in 1971, in New York City and 7,000 of them were ultimately convicted of felony charges. So that the mere fact that a large number of people in the House of Detention are accused of felonies has rather less meaning to me than it might have otherwise.

THE COURT: Wouldn't you also think that the actual nature of the offense would be just as important as to whether it is a felony or a misdemeanor?

THE WITNESS: Yes.

THE COURT: Somebody who is arrested for embezzlement is not necessarily a security risk.

THE WITNESS: Right. Frequently correctional people will tell you the person they have the least problem with are those accused of homicide.

THE COURT: Yes, I understand that, even as recidivists, thank goodness.

Q As to the actual percentage, are you aware of the percentages?

A Not precisely but I know it's an overwhelming percentage.

Q An overwhelming percentage --

A Those in the Manhattan House of Detention are those on felony charges.

Q If all inmates are not afforded the right to optional lockout, can you envision a system of optional lockout which can be implemented which doesn't provide for optional lockout on whole floors? In other words, we've got a separate mental facility on the tenth floor. Floors four through nine, general housing floors, with certain minor exceptions, can you have

optional lockout in a system that you might envision on half of the floor? For example, possibly serious felons being housed on the "A" and "B" sides and the less serious felons, alleged felons, those who might have optional lockout, being housed on the "C" and "D" side?

A I understand what you are saying, and I recognize the difficulty of the administrative problem. I realize that by treating different parts of a floor or different floors differently you might well be generating conflicts and problems of a different nature.

I recognize, also, that the building of the Tombs is such that with the two-tiered level on each cellblock and with the number of cells at the end where the visibility and observation is even more difficult, that there could well be a legitimate point to saying that unless we ask all of the prisoners out we would have no control over what, in fact, would be happening because we have no way to observe it. I appreciate that.

At the same time, in other institutions in the city that problem is much less severe than it is in the Tombs. And in the Tombs itself I think it is still possible to be more flexible, either that or to permit much longer hours of lockout, perhaps, as an answer.

Q Would you consider lengthening the lockout time as a

possible substitute, maybe not quid pro quo but moving toward the direction of flexibility which you desire?

A Well, it's certainly a step in the right direction. I don't know precisely what the hours of lock-in are now, but not too long ago prisoners were essentially locked in their cells eighteen hours a day, and that to me is just horrendous. And I think there are so many security arrangements on these floors that it should be possible to permit prisoners much more time out of their cells, and I would hope that we would move toward an objective of permitting them to be out of their cells if they want to be and in their cells so that they can have an opportunity to read or to study or to work or to be by themselves if they want to be. It's not very much to give a person, but to the extent we can give it, we ought to.

Q In your opinion, can we move or can we take steps to implement an optional lockout system before we have implemented a more detailed and sophisticated classification system than we have at the present time?

A I'm never very good at projecting what would be, et cetera. The way I work in the Board of Corrections is I try it, and I try to learn from the experience, and if the experience shows that what I had hoped would be so doesn't happen, we don't recommend it. Personally speaking, I find

that all of us live with traditional attitudes that resist change and that by simply trying something we learn a great deal, and I would hope that the department would at least on a fair and extensive pilot basis try an optional lockout and see what happens.

Q What security problems would you envision, or do you envision any security problems if an optional lockout system were to be implemented?

MRS. SHAPIRO: Your Honor, before we go on, I would just like to clarify that we're all talking about the same kind of optional lockout because I understand that there are two kinds, one where the cell doors are locked and the inmate can be locked in or out of their cell, and the other where the cell doors are open and inmates can go in and out of cells at will.

THE COURT: I take it Mr. Kranis' questions have been directed towards the one in which you have to either choose to be in or out and Mr. vandenHeuvel's answers seem to be responsive to that, although he did indicate the ultimate objective would be the complete option.

MR. KRANIS: My questions were directed towards a system whereby an inmate would either remain in or come out.

THE COUNT: Let's call it limited option.

MR. KRANIS: Yes.

A The limited option seems to me to preclude the problem that disturbs most correctional people, the problem of sexual assault or other physical assault. I think at that point the major problem you have is the protection of the inmate against his own suicidal or self-destructive behavior, and I think the department now has the classification capacity to at least identify those who have suicidal tendencies or those who have a mental history that requires special observation.

Given that present capacity of the department, it seems to me that the limited option doesn't invite too many security risks.

Q Mr. vandenHeuvel, are you familiar with the earlier testimony in this case of Dr. Augustus Kinzel?

A No, I'm not. I have read things by Dr. Kinzel.

Q Earlier in this case, Dr. Kinzel testified that if a man wants to commit suicide nobody can stop him, that men have been able to hide suicidal traits, especially intelligent men, and go about their business as they see fit.

Assuming for a moment that that is the fact, that any man who really makes up his mind to commit suicide can do so --

A I don't accept that, by the way. That's his judgment.

Q But if we may assume that, just for the moment, for the purposes of the next question, and once again referring you to your earlier testimony in which you indicated that in the Tombs prisoners housed in cages are housed in cages and unless you stand in front of them you cannot prevent suicides, that prisoners only need a minute to accomplish the act.

Unless you have a highly sophisticated classification system which will guard against the fears of Dr. Kinzel, how can an optional lockout system, limited lockout system, be implemented in light of your testimony?

A I don't know of any inmates who commit suicide during lockout. They do it while locked in. There is plenty of time to commit suicide in the lock-in hours.

It seems to me the optional lockout plan would help the department prevent suicides because one of the things that we learn in the Prison Death Review Board is that when you have crisis intervention, when you have human contact, conversation going on, the possibilities of suicide become more and more remote. If you have prisoners outside who are, in fact, talking, et cetera, you have an additional possibility of preventing the suicide. You are still left with the problem that you would be left with during any lock in period of a man who commits suicide.

Q Isn't it true, though, if you have a limited optional

lockout system that individual inmates may choose to remain in their cells rather than come out and, therefore, those inmates who may desire to commit suicide would have a greater opportunity to do so because the observation of the guards --

A They would have the same opportunity they would have during any lock-in time, it seems to me.

Q Are you familiar with the physical makeup of the institution?

A Yes.

Q Isn't it true that during lock-in guards would have a much better view of the cell area from the bridge than they would if their view were obstructed by other inmates who were locking out and in the lockout area?

A I would doubt it but, I mean, that is something that is easily verifiable.

THE COURT: That's something if you wish to press I think ought to be determined by my visiting the place and looking at what you are referring to.

A Yes. The problem you have, as I see it on that second tier of each cellblock, is where you're housing people who are not visible really easily at any time and I would hope the department is very careful who they house in the second tiers. As part of the price perhaps of an optional arrangement you may suggest the inmates have to so organize

themselves so that inmates do make walks, for example, every three or five minutes around the entire area to see to it that nobody is harming themselves. There are a lot of ways you could organize it.

Q With respect to your earlier testimony about physical recreation, I believe you indicated that you became aware of certain equipment which you thought might be feasible, the installation of which you thought might be feasible in the institution, and that you discussed this with Warden Schaefer. When did you discuss this with the warden?

A I guess it was about two months ago. I didn't discuss it personally. I sent it to him and I never heard back.

Q What was the exact nature of the equipment that you called to his attention?

A It's at the Downtown Athletic Club on the tenth floor, and it's various pieces of equipment, for example, there's a solid block and you can do a tremendous number of chest exercises, arm exercises, leg exercises. It has the advantage of weights without having the weights, which was interesting to me.

THE COURT: There are many health spas being organized now for public use at a price, of course, which have all kinds of machinery that I know something about, having visited one recently, which I would assume, at least

to admit that I didn't. He said, "I'm Mr. Johnson." He says, "I was the guy who got the highest marks in the sixteen graduates in the high school equivalency program at the Tombs."

And I says, "Gosh, and you're working now?"

And he says, "Yes, it's not very good but it's the only job I could get."

I said, "Well, call me and let's see if we can't get you into something else besides packing groceries."

If you've got the energy and motivation to get the high school degree, you've got to be able to do a lot more. That was very exciting to me.

You know, suddenly an awful lot of time and effort that so many invested in this prison system had some dividend in terms of human achievement, so I think there are things the prisoners can do. But we're moving in that direction.

Q You earlier testified as to, I believe, the desirability of installing transparent windows in the institution. Do you have any idea how much that might cost?

A I wouldn't care. I think anything you could do on any of these problems to let in the light is what you should do, and in the prisons we should let in the light through the windows and through the doors and through everything. And if there were opaque glass or translucent glass and there were a possibility of transparent glass, I would take transparent

glass. It can't cost too much.

Q With the physical setup of the Manhattan House of Detention, do you have personally any idea, assuming transparent windows were installed, how many of the inmates would benefit from it in terms of being able to see out, aside from having the benefit of the light coming in?

A Well, at least during lockout they should be able to see out. Many of them could see the sky, and when I think of some of the men in that institution whom I have met who have been there for over two years, some three years, some four years, you know, to see the patch of sky once in awhile, I think, would be a rewarding experience.

Q Are you familiar with the renovation plans for the rooftop area?

A Yes, putting on that cover?

Q Right. Once that job is completed, will there be opportunity, based on your knowledge of the plans, for inmates to look out and see the sky and see the outside?

A Yes.

THE COURT: I don't understand you. If what happens?

MR. KRANIS: There will be provision on the roof, there will be windows enclosing --

THE COURT: You mean there will be an opportunity if you are there?

MR. KRANIS: On the roof. You can't see it from downstairs.

THE COURT: The question is, how often would you be there?

THE WITNESS: I wouldn't give the top priority of what the department wants to do to putting in new windows. I would try to do it. I would certainly replace every broken window with transparent glass, and I would try to develop your budget in such a way so that in the course of a year's time you were able to replace those windows with transparent glass. Maybe if you did it on a single floor you could really judge the impact of it. Maybe we overemphasize the impact. And you know, my not valid attempts at the poetry of the sky doesn't justify an inordinate cost that is not measurable in terms of helping that institution. You might find after you do one floor that all of us would agree that it's not very helpful.

Q I would like to clarify or ask clarification of an earlier point that you made.

Is it your understanding that given the present visitation setup in the institution that inmates, all inmates, are searched as they leave the visiting area?

A Yes.

MR. KRANIS: May I have a moment, your Honor? Four

MR. KRANIS: Your Honor, we can't hear the response.

THE WITNESS: I have four more years to go.

Q Did you work the entire time for the six years that you were out of prison?

A Yes, for the six years I was a fugitive I worked every day.

THE COURT: What kind of work?

THE WITNESS: Well, I learned food service, bartendering, you know, just food service in general, waiter, butler.

THE COURT: Unless it will incriminate you or you don't want to answer, where did you work?

THE WITNESS: Houston, Texas; Atlanta, Georgia.

Q Mr. Williams, you stated you have been in the Tombs ten months?

A Yes, sir.

Q Have you ever had any visits while in the Tombs?

A Yes, sir.

Q How many?

A About six or seven.

Q Who has visited you?

A My sisters, my [illegible] my nephew, my daughter, friends.

THE COURT: Where does your family in general live?

THE WITNESS: In Harlem, sir.

THE COURT: In New York?

THE WITNESS: Yes, sir. My wife at the time that I absconded -- she died while I was gone.

THE COURT: But you're a New Yorker?

THE WITNESS: Yes, sir.

THE COURT: Okay.

BY MR.HERMAN:

Q Mr. Williams, when you have visitors, are you able to see your visitor?

A Not very well.

Q To the best of your knowledge, is your visitor able to see you?

A Not very well.

Q How do you know that?

A Because on each occasion --

Q On what do you base that conclusion?

A On each occasion I haven't seen my people in seven years, and when they wanted to see my face or how I looked or how I was dressed I had to ask someone to open the visiting room door so I could step back in the light and then let me see how I looked and that's how they were able to see me. That's how I know they can't see me in the booth other than the outline.

Q Did they ask you to step into the light?

A They say I want to see you, I can't see your face, I can't see how you have changed.

Q Mr. Williams, are you able to hear your visitor?

A On some occasions. There's new phones in some booths. In the old booths where the phones are old, you can't hear. When you visit in the old booths, the row of them, everybody has a defective phone and so the noise is consistent. Every inmate is yelling, you know, and it's hard to hear above the yelling from the guy next to you or either side of you. And then the phones would be real low in the old booths. And it's difficult to hear.

Q Mr. Williams, have you ever asked to change your booth? Have you ever had occasion to ask to change?

A Nearly every time except when I get a brand new booth, which is rare. I have had to change the booth.

Q Have you ever had occasion where you have had no phone?

A Yes, on the last visit the booth assigned to me had no phone whatever. It was just gone. I don't know why, but it was gone, and the officer in charge told me to look around and find another and I did. And I had my visit.

Q How long do you get for a visit?

A Oh, about thirty minutes.

Q On this last occasion when you had to switch from a booth that didn't have a phone to a booth that did have a phone, how long was your actual visit with your daughter?

A About half the allotted time. About fifteen minutes. That was the total visit.

Q Mr. Williams, can you describe to the court --

THE COURT: Could you ask a question there? I could imagine all sorts of reasons but what were the actual reasons that caused you to take fifteen minutes to change from one phone booth to the other?

THE WITNESS: That was the total time I had to talk. When I got there I don't know how much time I had, you know, the pickup and the bringing down and the wait for the clearing of the room.

THE COURT: How much time was taken out as a result of having to change from one booth to another?

THE WITNESS Just a few minutes, really, because all I had to do was walk down the line and find an empty booth and the other side had to locate my visitor and bring us together.

THE COURT: You're telling me that the various things that happened in connection with the visit, including changing of booths and coming down from your floor and all that, reduced the actual time to fifteen minutes?

THE WITNESS: Yes, sir, in that particular instance.

BY MR. HERMAN:

Q Mr. Williams, could you describe for the court the feelings you had after you've had a visitor?

A Well --

C Could you speak up, please?

A It's lonely. That's just it. It's lonely.

THE COURT: That's a pretty good description. I would like to ask you this question. And we're dealing with things that are very hard to express, I know, and if you can't, you can't. The major objection here of the visiting arrangements is this glass and phone setup.

THE WITNESS: Yes, sir.

THE COURT: Undoubtedly you feel lonely after your visitors leave. Are you able to picture whether or not you would feel lonely if you didn't have the glass and phone? I mean, you still wouldn't feel like going upstairs and singing, I suppose, would you?

THE WITNESS: No, but I would feel a great deal better if there was more to the visit, more contact or more realism.

THE COURT: You've been in other prisons?

THE WITNESS: Yes.

THE COURT: Dannemora and Auburn?

THE WITNESS: Yes, sir.

THE COURT: What kind of visiting arrangements did they have there?

THE WITNESS: I haven't had a visitor in Auburn, I'm only there two months, but in the old days in Dannemora they had a wire screen. At Sing Sing they had nothing.

THE COURT: Were you at Sing Sing?

THE WITNESS: Yes, sir.

THE COURT: They had nothing there?

THE WITNESS: At Sing Sing it's a contact visit but a table between the visitor and the visitee.

THE COURT: Could you put your hands on the table and hold hands and so on?

THE WITNESS: Yes, sir.

THE COURT: I think a more fruitful line of questioning then would be, you know, was there any difference in the feeling?

THE WITNESS: A tremendous difference.

THE COURT: Do you want to tell me what the difference was?

THE WITNESS: The difference in Sing Sing is that the visit is complete, I mean, you can have a more meaningful visit in Sing Sing where the only thing separating you is a table and there's no real barriers, you know.

THE COURT: Are you able to kiss your family members?

THE WITNESS: Yes, upon arrival and upon departure you're able to touch and to speak freely without yelling. You don't feel isolated, and it's not uncomfortable for either person as it is in the Tombs.

THE COURT: All right, Mr. Herman.

BY MR. HERMAN:

Q Mr. Williams, how does your daughter, to the best of your knowledge, come to visit you?

THE COURT: By what means or what route?

Q Yes, by what means?

A By subway.

THE COURT: Where does she live?

THE WITNESS: In Harlem, in central Harlem.

Q Does anybody come with her?

A My daughter, no. My sisters, they have to be driven down.

Q Where do your sisters come from?

A One comes from East Harlem and the other comes from, I guess you'd call it Harlem, too, central Harlem.

Q And they're driven down?

A Yes.

MR. KRANIS: Your Honor, may I inquire as to the relevancy?

MR. HERMAN: Your Honor, I'm going to --

THE COURT: It may have to do with visiting hours.

MR. HERMAN: Visiting hours and also the number of visitors admitted.

Q Who usually drives your sisters down?

A My nephew or my niece.

Q Are they able to visit you, also?

A No. Not at the present policy of the Tombs. Years ago they were able to come in, but now they must wait outside.

THE COURT: Well, is that because you can't have more than one visitor at a time or because of their relationship?

THE WITNESS: No, because you can only have one visitor at a time.

Q You stated that previously you could --

A Years ago.

Q Could you describe to the judge when this was and what the procedure was?

THE COURT: Were you actually at the Tombs at the time you're talking about?

THE WITNESS: Yes, sir.

THE COURT: How long ago was this?

THE WITNESS: Well --

THE COURT: About.

THE WITNESS: Well, I know definitely in 1955. My mother could come with my sisters and my brother altogether, at least two, three, you know. I neve had no more than three come down but they all could come and I could see and talk to them one at a time as they approached the window. They didn't have to wait outside.

THE COURT: Even then they had the windows, is that right?

THE WITNESS: Yes, they didn't change since then. But they were allowed inside.

MR. HERMAN: Your Honor, I just have a couple of more questions and they pertain to the issue of noise. I think the city will stipulate that it's very noisy in the Tombs and I would just like to from that point on ask Mr. Williams a couple of questions.

MR. KRANIS: I won't stipulate that it's noisy.

THE COURT: I don't know why it needs a stipulation. There is plenty of testimony to that effect. You can ask a question whether it is stipulated or not.

MR. HERMAN: Okay. I misunderstood a conversation we had.

THE COURT: In any event, I think the facts of whether it is rather noisy are the least difficult for you to prove.

Q Mr. Williams, does the noise in the Tombs affect you in any manner?

A Yes. Certainly, to a considerable degree.

Q Would you tell the court how it does?

A I try to write and I can't write in the daytime because of the noise. I can't write until late in the evening. On our floor the radio and the T.V. are always simultaneous. They run together all the time.

Q What floor are you on, Mr. Williams?

A The eighth floor.

Q And --

A And there's the normal inmate noise and the normal utility racket.

THE COURT: How does the noise compare with your stay in the '50's, is it any different?

THE WITNESS: Yes, considerably because in the '50's there was no radio and there was no T.V.

THE COURT: Maybe we ought to abolish them.

THE WITNESS: There was none in the '50's. Until late in the evening, when it's just the radio, it's extremely difficult to do anything.

THE COURT: What hour is that?

THE WITNESS: Around 8:30 most nights. Most nights. And then around ten o'clock, eleven, if the lights are left on.

Then it's a pleasure, but it makes it hard to function the next day if you can only work, you know, during your sleeping period.

THE COURT: What time did you usually go to bed?

THE WITNESS: Well, it depends on the noise level.

THE COURT: Well, if it starts to quiet down around 8:30, what time do you go to bed?

THE WITNESS: And I have no work, I lay down to sleep around 9:30. But that hardly ever happens.

Q Mr. Williams, what type of writing do you do?

A Well, I try stories and prose. Short stories and prose.

Q Do you do any other type of work?

A Yes, legal work. Pertaining to my case and others.

MR. HERMAN: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. KRANIS:

Q Just one or two questions, Mr. Williams, probably two.

When you were up at Dannemora, where is Dannemora?

A Right inside the town of Dannemora, New York, on the Canadian border.

Q Lodge is particularly in the State of New York?

may I approach the Bench?

THE COURT: Can't you ask the question openly?

MR. KRANIS: Where is this going to lead us?

MR. BERGER: This will deal with the effect of his incarceration in the Tombs on his nervous tension and will not deal with the adequacy of medical care within the institution.

Q Prior to your arrest, in addition to the medication you were receiving, did you do anything on your own to help relieve your tension?

A Well, I exercise quite a bit.

Q What kind of exercise did you do?

A Usually I jog in the mornings. I run about three, four miles.

Q Did that help?

A Well, it's about the only thing I know that will get rid of my nervous tension.

Q Were you able to exercise in the Tombs?

A Not at all.

Q Were you able to go up to the roof?

A Once a week. Usually on a Wednesday but I made about three, four court appearances on Wednesdays.

Q If you miss the roof because of a court appearance were you allowed to go up on a different day as a substitute?

A No.

Q What kinds of exercise did you get when you did go up to the roof?

A The only thing you could do is play a little volley ball or basketball and you had to wait your turn. So you're up there about an hour, an hour and a half and if you've got about ten or fifteen minutes exercise, you were lucky.

Q What kinds of games do they play on the roof?

A On one side it's basketball and on the other side its volley ball and they have about three ping pong tables and that's it.

Q Can everybody play in these games?

A No. They usually play about eight to ten fellows on a basketball and about twelve on the volley ball.

Q Is there any system for determining who gets to play?

A Well, you wait your turn for the winner -- you wait your turn and whoever [illegible] you get up and take their place.

Q Does the winning team keep playing?

A Right.

Q What kind of exercise have you been getting at Sing Sing?

A Well, at Sing Sing I get out in the yard in the morn-

ing and in the afternoon and I run about, usually about five, six miles a day.

Q How often can you do this?

A Oh, about two, three hours in the morning and about two, three hours in the afternoon.

Q Have you had any trouble with nervous tension at Sing Sing?

A None whatsoever.

Q Any trouble sleeping?

A None.

Q Have you needed any medication?

A None.

Q Mr. Rubinfine, when you were on the sixth floor in the Tombs, do you recall having seen a Chinese inmate near your cell at one time?

A Yes.

Q Do you recall the man's name?

A No.

Q Do you know what became of him?

A He hung himself.

Q How long was he on your floor before he hung himself?

A I think two or three days at the most. I think it was only two days.

Q When he first came onto the floor, did you notice

ing and in the afternoon and I run about, usually about five, six miles a day.

Q How often can you do this?

A Oh, about two, three hours in the morning and about two, three hours in the afternoon.

Q Have you had any trouble with nervous tension at Sing Sing?

A None whatsoever.

Q Any trouble sleeping?

A None.

Q Have you needed any medication?

A None.

Q Mr. Rubinfine, when you were on the sixth floor in the Tombs, do you recall having seen a Chinese inmate near your cell at one time?

A Yes.

Q Do you recall the man's name?

A No.

Q Do you know what became of him?

A He hung himself.

Q How long was he on your floor before he hung himself?

A I think two or three days at the most. I think it was only two days.

Q When he first came onto the floor, did you notice

anything unusual about him?

MR. KRANIS: Objection, your Honor.

THE COURT: Why, on the ground that he's not an expert? Let's see what he reports. If it is something that the average person would understand, then I think it is relevant.

THE WITNESS: Your Honor, my cell is adjoining -- in other words, upper B11 is here, and you go straight and there's a doorway here going into upper F section.

THE COURT: Yes.

THE WITNESS: And my cell is right on the corner of the doorway, and this Chinese boy --

THE COURT: Are you trying to tell me you could see him from your cell?

THE WITNESS: Well, when we lockout, my section locks out last. Now, this boy would sit on this junction there right by the door. There's a railing there and you can look downstairs or you could fall off of it and he would sit in front of my cell, which the fellow in my cell was there about three, four months with me, and he sat there morning, noon and evening. In other words, that I know of, we never seen him even go down to eat.

THE COURT: Is that during his lockout period?

THE WITNESS: Right. That's the lockout period.

Because the officers wouldn't let you stay in your cell because they were afraid of people hanging themselves.

THE COURT: So what you're saying is this man sat in one spot morning, noon and night and never moved?

THE WITNESS: Right.

Q What position did he sit in?

A With his knees drawn up and his arms around the knees.

Q Did you observe any officers, any correction officers, go by and see him during this period?

A Yes, they never said anything to him.

Q To the best of your knowledge, would an officer have to regularly pass that spot during the lockout period?

A Every lockout period.

Q Could you explain to the court why that is?

A When the officer -- has to lock the back section, come through my section to open up the B side to let us out. So the man would be sitting there and then when he'd lock our doors and we'd go downstairs, he'd have to see the man sitting there. And when he come back upstairs again, the man would be sitting there until he would tell him to go into his cell.

Q How long did you say that the Chinese inmate was in this condition?

A Two days that I know of.

is scheduled for February of this year.

Q This will be in the nature of a teaching --

A This will be in the nature of a teaching assignment.

THE COURT: What number of people do you expect to be able to partake or participate in that program at one time?

A I would estimate some 15 to 20 people at a time, depending on the instruments they would have.

Q Is it not a fact that we have received certain numbers of instruments donated by groups of people or individuals on the outside?

A Yes, we have.

Q Do we have plans to utilize these instruments in connection with this group?

A Yes, these will be the instruments that we use with this group.

Q Is there a roof to that recreation area at the present time?

A Yes. We have a recreation area on the roof which is useable only during good weather. This roof has not been used for quite awhile, and in 1971 or 1972, we had to repair it, new flooring put on it and we are able to use it but only during the good weather time.

Q Do we have any plans for the roof to increase its useage; and if so, what are those plans?

A We have the budget of the City of New York which has appropriated $300,000. The plans have already been drawn and accepted, and we are now looking forward to pushing this into --

MR. BERMAN: Objection, your Honor. We have a consent decree, the subject matter of which the plaintiffs deliberately withheld testimony on our direct case, and because our time is limited, I think it is inappropriate for the City to bring out matters which are already in the record, part of our stipulation and consent decree of which we are all well aware.

THE COURT: Mr. Berger, I tried not to be narrow in my rulings when the plaintiffs were presenting their case and I don't want to be narrow here.

I would agree with you as a generality that there's no point in asking questions on which the matter is already in evidence, but I'd rather let Commissioner Malcolm tell his story as I assume he is prepared to tell it and I don't see any harm.

I am not going to give them credit for two roofs because I have heard it twice.

Q Upon completion of this renovation project, will

that recreational area be available for physical activity on a year-round basis?

A Yes, it will.

THE COURT: At the present time, when you say it is only used in good weather, does that mean only in warm weather, or, for example, the last couple of weeks have been beautiful days, has it been used at all?

THE WITNESS: No, it hasn't been used. It is usually used in warm weather or in the fall. Spring, summer and fall. Hardly ever in the wintertime.

Q Is there an arts and crafts program at the institution; and if so, would you please describe it?

A Yes, we have a volunteer group there, black cultural arts society, headed by a professor from Queens College, Professor Benny Andrews, who serves some sixty inmates about three times a week.

Q Have inmates --

THE COURT: Are they the same sixty inmates or does that mean a hundred and eighty inmates all receive --

THE WITNESS: Well, they may or may not be the same. You may have some dropouts and some new ones coming in, but I would think it is almost the same.

THE COURT: There are not three deliberately separate groups?

Q Commissioner Malcolm, will the plans to which you have testified provide any additional space in the Tombs for physical recreation?

A Yes, it will.

Q What space will that be?

A The fifth floor and the eighth floor will provide in each area 5,000 feet of space there.

Q No, my question, Commissioner, was for physical exercise and recreation, not for programs.

A Well, it would be the same space that we have on the roof, of course, will not be expanded. The only -- I shouldn't say the only, the major difference is the fact that it will be utilized or can be utilized 365 days a year.

Q Will there be any space for exercise on the fifth and eighth floors?

A Physical exercise?

Q Yes.

A No. We don't contemplate that.

Q With additional funds, Commissioner, would it be possible to provide any additional space for physical recreation or exercise for inmates of the Tombs?

MR. KRANIS: I object on the grounds it is speculative.

THE COURT: I don't know whether the Commissioner thinks it is speculative or not.

If you had ten million dollars, could you create any more space for physical exercise?

THE WITNESS: Not in the given facility.

Q Commissioner, isn't there a lot across the street which could conceivably bw used for a recreational annex?

A That lot across the street is owned by someone other than the City, and we have no acquisition to that lot.

Q Didn't the City wish to utilize that site at one time to build a housing annex to the Manhattan House of Detention?

A This was being considered a few years ago.

Q To do that, wouldn't the City have been able to acquire the property?

THE COURT: Well, assuming that the City would have been able to acquire the property, this is across the street, you say, an intervening street.

MR. BERMAN: Yes, that is correct, your Honor, although there could be a bridge just the way there is into the Criminal Courts Building.

THE COURT: Yes. Well, I think you are free to argue from physical facts whatever you wish to argue. The Commissioner is really no more of an expert than

I am.

Are you Commissioner?

THE WITNESS: No, I'm not expert on that.

THE COURT: We can all use our common sense on what can be done.

Q The department having abandoned its plans for a new housing facility on that site, does the department have any plans to use that site for physical recreation?

A The department doesn't own that site, so it doesn't have any plans for it.

THE COURT: Well, you haven't recommended the acquisition of it, either, for any purpose, I take it?

THE WITNESS: We have not.

Q Commissioner, what use do you presently make of the third floor of the Tombs?

A The third floor is a dormitory floor housing sentenced inmates who are there as part of our work force.

Q About how many individuals do you house there?

A We have 100 -- roughly 160 inmates housed on that floor. Roughly 160.

Q Commissioner, as you increase the amount --

THE COURT: May I ask a question there?

How does that compare with the average population on the other floors?

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Q Commissioner, at present, how long are the roof periods for the detainees?

A Well, at present, because of the inclement weather, we are not presently using the roof. When the roof is being used we try to give them a session close to an hour up there.

Q How frequently do they get that session?

A This again depends on the matter of the weather.

Q I meant when it is open in good weather, how frequently do they get to go up there? Say how often per week.

A Well, I would say that, to the best of my knowledge, perhaps once a week, the best of my knowledge, after the roof is repaired.

Q One hour on the roof, does that include time spent going from the housing floor up the elevator to the roof and then returning again to the housing floor?

A Well, roughly it would include, I would say, about 50 minutes time on the roof.

Q Is the roof large enough for all of the detainees who are up there on any given session to engage in exercise and recreation simultaneously?

A Well, the roof is -- it depends on activities. If you are playing basketball, certainly youcan't have

50 or 60 men playing basketball at any one given time. And knowing something about recreation, I don't think there are very few gyms that would permit that many men at the same time to engage in that kind of activity.

So that you cannot have them all playing at once if it is basketball. If it is volleyball, more people can be involved.

THE COURT: You don't have any gymnastics of any kind or setting up exercise or stuff in which large numbers of men are involved?

THE WITNESS: No, we don't have that.

Q Are there any machines that people use to exercise?

A What kinds of machines?

Q There's been some testimony in the case about machines at the Federal House of Detention on West Street similar to machines that I understand are used at the New York Athletic Club.

A Yes, I'm familiar with that machine. In fact, I taught weight lifting with the Board of Education for some 15 years. I'm aware of that machine, in the evenings, and that kind of machine won't fit anywhere in that institution. I have seen the one at 75 Morton Street with all the different equipment for various kinds of exercises. That kind of machine won't fit -- if you use

that machine on the roof, you take up the whole space.

Q Have you seen the machines at the Federal House of Detention on West Street?

A No, but there is a sort of standard machine that is put out that I think you are talking about.

Q Would it be possible to construct areas on the fifth and eighth floors where such machines might be located?

A If it is similar to the machine that I have in mind, you could not construct that kind of area for this kind of machine.

THE COURT: What's at 75 Morton Street?

THE WITNESS: That's the -- the State had a narcotics center there. Shared a narcotics center that was closed down which we tried to get.

THE COURT: All right.

Q Commissioner, how many basketball courts are there on the roof?

A Well, there is one at either end of the -- of each section which means that you could have a game going on at the far end, the west side, a game going on on the east side or, rather, the east side is over here and the west side, two games going on at the same time, but not full court games.

Q Half court games?

A Half court games.

Q Are there any volleyball courts on the roof?

A You can use the same thing. If the group wants to play, I have seen -- when we opened the roof, we had groups engaged in volleyball in one side of the roof and on the other side they are engaged in basketball.

Q About how many men can participate in that area in say volleyball?

A Well, you could run 18 men at one time with volleyball.

Q 18 --

A Nine and nine.

Q Nine on each half of the roof?

A Yes.

THE COURT: It's nine on each team of the game; is that what you mean?

THE WITNESS: That's correct.

Q Commissioner, when the Tombs reduced to 100 per cent occupancy, how many men do you estimate will be on the roof during any given session?

A Well, the number on't increase, but the frequency would increase. Because we have a reduction in the population.

Q How frequently will they go to the roof at that time?

A We anticipate, together with the roof and the other areas, having at least one hour per week of program make activities. Some of this may be -- most of it may be -- I mean one hour a day. Most of this may be recreational and some of it may not be.

We also have to understand that a lot of people would prefer to participate in some of the quiet games rather than the roof games. Once given this kind of facility to work with, and determined by our experience over a period of time, we will be able to better answer that question.

Q Would it be fair to say, Commissioner, that at this time you have no written plans as to precisely how much each floor or half floor will go to the roof after June 1, 1973?

A No, we don't have any written plans.

Q Thank you.

Oh, yes, how long are the sentenced help permitted to be on the roof? What is the length of their periods on the roof?

A I'm not aware of that. I don't know if there is any distinction between the sentenced help and the

other group.

Q If I were to tell you that --

MR. KRANIS: Your Honor, I would object on the grounds that the problems or the questions of sentenced help are not relevant.

THE COURT: I don't know if they are relevant or not but I don't think it casts much light on it if the Commissioner is asked whether he disputes somebody else's information. That leaves me knowing he would dispute somebody else's information but wouldn't tell me what the facts are.

MR. BERMAN: That is correct, your Honor, I just wanted to bring out that Commissioner Malcolm's predecessor, Commissioner McGrath, in a deposition stated that the --

MR. KRANIS: There are appropriate ways for doing that.

THE COURT: I can't accept that for the purposes of the trial. He may have said that.

MR. BERMAN: I would like to know if being advised of that would Commissioner Malcolm reconsiders his answer.

THE COURT: Does that refresh your recollection in any way? If you don't know, don't say so just because Commissioner McGrath said so.

THE WITNES:: I don't know.

Q Commissioner, what months of the year is the roof open?

THE COURT: Now? You mean until it is enclosed?

Q Until it is enclosed, up to the present, what months of the year has it been opened?

A Well, usually it's open from spring, early spring, to around April. That depends on the weather again. Until fall. Let's say October. And there is also -- this is also based on what kind of weather we are having, whether it is a very chilly April or whether it is warm enough to go on the roof.

THE COURT: In other words, on the average it has been about six months a year, April to October?

THE WITNESS: That's correct.

MR. KRANIS: Your Honor, may I point out that any of the items that Mr. Berman is dealing with at the present time are contained in the stipulated facts which were presented to the Court.

THE COURT: Well, I would appreciate it, Mr. Berman, that we don't waste time on things that are in the stipulation if all you have to do is remind me of those when the time comes.

MR. BERMAN: I'm sorry, your Honor, the stipulation indicates the roof was used May through September.

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Q Commissioner, I believe that during your testimony last month you informed the Court or, rather, the Court was informed by Warden Schaefer through Mr. Kranis that the Department received Sunday newspapers and that they are delivered to the inmates the following day of the week.

Do you recall that?

A I recall that, yes.

Q Do you recall stating to the Court in your last affidavit to the Court from November, "Arrangements will be made with local newspapers so that Sunday papers can be picked up Saturday evening and delivered to the Manhattan House of Detention for men by Sunday morning. If the papers are not donated, the City will allocate funds for same."

Has that been done?

A That has not been done.

Q Do you have any indication as to when it will be done?

A No, I don't. We still seek an effort to get these newspapers in. I don't know the details, but if we are not able to get them we will purchase the Sunday newspapers ourselves.

Q Commissioner, on a day when the detainees' floor is scheduled for recreation activities, say, on the roof

or the basement and he happens to go to court on that particular day, is he given a substitute recreation period to make up for it or does he have to wait until the following week?

A Well, he would have to wait.

MR. BERGER: Your Honor, I would like to mark an exhibit for identification concerning "Sentenced Help" and "Take assignments from the Tombs" relating to the specific functions performed by each of the sentenced help.

THE COURT: What exhibit number is that?

(Plaintiff's Exhibit 21 marked for identification.)

MR. BERGER: I believe the City produced this. They should know what it is.

This is not specifically labeled from the Tombs, but I would ask for a stipulation that it relates to the Tombs.

MR. ZWIBEL: That is correct. The date is on there as of when it was prepared.

MR. BERGER: January 23, 1973.

MR. ZWIBEL: That is classified as the Sentenced Help as of that date.

Q Commissioner, according to this list, the sum total of 34 sentenced inmates work on the various tiers of the

A Well, the average departmental-wide is about four and a half months, the average.

THE COURT: I'm a little confused. I thought you said something about 35 days.

THE WITNESS: The average case, taking all Criminal Court cases and all Supreme Court cases, some 80,000 cases, when you break down and average the heavy weight is down at the bottom, where they would be there up to 10, 15 days, which gives us an average rate of 35.

It's only out of the 80,000 people passed through our whole system each year, it's only a relatively small portion of these people who end up in the Supreme Court for long periods of stay. Roughly say 6,000 people.

THE COURT: They end up in the Supreme Court because they have been indicted for felonies; is that it?

MR. BERMAN: That's how it becomes a Supreme Court case, yes, your Honor.

Q Isn't the Tombs made up primarily of heavy Supreme Court cases?

A Not necessarily. I have no breakdown on that but not necessarily. It is reflective of the population that's in our -- throughout our entire detention system.

Q So would it be fair to say that there are many lighter misdemeanor type cases -- detainees in the Tombs?

Q Commissioner, till what hour are inmates locked out at the moment?

A Well, the lockin is roughly around 8:30 instead of 9:00. The count starts at 9:00.

Q I see.

Commissioner, with more correction officers and staff, would it be possible to have lockout at 11:00 o'clock sooner than June 1st, if you had the officers?

A Of course. When you expand your programs, you expand lockout, you can, of course, with additional staff, of course, do this. One of the problems that we have, of course, is increasing -- we are now attempting to increase, through a collective bargaining agreement, the correction officers work beyond eight hours and this requires amending the administrative code under the Tombs system and we are in the process of trying to do that now.

THE COURT: What is your objective in that regard?

THE WITNESS: Our objective, of course, is to -- for example, if a worker is now working 1:00 to 9:00, he would have to put in overtime to work 9:00 to 11:00, so he would work from 1:00 to 11:00 and he would still put in the 2,088 hours per year but he would make fewer appearances. In order to do that we have to amend the

administrative code and the union has agreed to assist us in that endeavor.

THE COURT: They have. They are not opposing the proposition?

THE WITNESS: Not opposing the proposition.

Q Is the passage of that legislation necessary to begin the 11:00 o'clock lockout?

A We think it is. It is an administrative problem. Otherwise, we would have to begin to run men on overtime, and in doing that, of course, we would have a great deal of problems with the workers.

Q Commissioner, do you know when the lockout time is incrased to 11:00 o'clock, would you know what the total number of lockout hours per week in the Tombs will be?

A Well, if it is eight now, it should be at least ten or close to ten. I mean, on a pure mathematical basis.

Q That would be 70 a week, right?

A It would at least be two additional hours.

Q Commissioner, do you know how many hours per week detainees are presently locked out in the Bronx House of Detention?

A No, I'm not aware. I mean, I have -- we have charts, of course, on all the lockout hours throughout the city.

Q Isn't lockout in the Bronx a good deal longer than presently at the Tombs?

A I'm not aware of that. When you say longer, you mean beyond 9:00 o'clock at night?

Q The total number of hours per week, Commissioner.

A It may vary from institution to institution.

Q Do you know of any reason why it might be longer at the Bronx than at the Tombs?

A In the first place, I don't know if it is longer. In the second place, I'm not aware if it is longer what reason we may have. It is a smaller institution. You have also -- half of that institution is made up of dormitory and lockout in a dormitory means that he's out all the time. So there is a distinction there in terms of comparing one institution with the other.

Q Does the Bronx House of Detention house roughly the same types of cases as the Manhattan House of Detention?

A Yes.

Q If you had the money, the space, the personnel, would there be any policy objection to having more dorms in the Manhattan House of Detention as you have in the Bronx?

A If I had to construct an institution, Mr. Berman, I would construct the institution made up of facilities

for minimum, medium and maximum security which would have a combination of dormitories and rooms.

Q Thank you.

Commissioner, in formulating your plans for the future, have you considered the possibility of returning to the commissary system of the late 1960s, where detainees could personally go to the commissary and select items?

A We have had some problems with that in terms of transportation down to the basement and having the kind of commissary -- we have not formulated what we are going to do, as I said before, on this floor. It's very possible this kind of thing may be done on a floor, but it's been a space problem.

Q Do you know what space in the Tombs was previously used for the commissary?

A No, this is before my time. I'm not aware.

THE COURT: I'm not quite sure from what you just said, Commissioner, whether you have one or two problems with regard to commissary, whether it is just finding a place for it or whether it is taking a certain amount of your limited elevator time or both.

THE WITNESS: Well, it is both. It's both.

Q Of course, Commissioner, if the commissary were divided between the fifth and the eighth floors, then

tha Tombs?

A The overcrowding there is even higher than the Tombs, but, here again, you have a different type of institution and it is a different problem over there altogether.

Q Brooklyn has had afternoon or morning visiting for quite some time, hasn't it?

A I don't know how long, but it's been there for a while.

Q How about visits on week-ends, you don't have too many programs going on on the week-ends, do you?

A No, we don't.

Q Do you know of any reason --

A It is a matter of either staff or overtime.

Q I see. So it is --

A On week-ends we have, of course, there are those that get a visit on week-ends,the sentenced help.

Q That is only from 9 to 12 on Saturday morning?

A That's right.

Q So you have Saturday afternoon and all of Sunday if the City would provide you with adequate staffing and sources to do it?

A Absolutely, and if we preclude some of the plans that we have in terms of programmatic activity, increased

A Because we don't have an area to strip search the inmates. There are various sophisticated ways of bringing contraband in even though a man is strip searched, and I would say that we would have more contraband entering the institution.

Q Would it be more easily for this contraband to be passed from the outside to inmates, with contact visits?

A More likely.

Q Why is that?

A Because of the contacts. Before we have a steel wall separating the visitor from the inmate. Now we're going to have contact. Where we permit them to kiss they can pass things from mouth to mouth. We've had that experience already.

THE COURT: How have you had it if you don't have any contact visits?

THE WITNESS: On Riker's Island when I worked in the Reformatory we got all kinds of indications that narcotics were entering the institution, being passed through a balloon. The inmate would swallow the balloon with the narcotics in it and then he would pass it later on when he was in the cell.

Q Mr. D'Elia, can you describe for us the present lockout arrangements and system at the institution?

A At the present time, during the regular lockouts

everyone must lockout at that time, and they all moved into the specific quadrants that they are assigned to.

Q Could you tell us the physical setting in which the lockout period takes place?

A Yes. If you are familiar with the floors, each floor --

THE COURT: I am.

A E ch floor has four quadrants. This institution has a peculiarity, in that when they built it they tried to save money and they added the E and the F sections on the back which makes it very, very d'fficult to supervise and patrol.

The inmates in those areas also help to overcrowd the existing quadrants. The inmates in the upper and lower cell area are supposed to use the quadrant. Because we have the back sections, inmates from those areas must flow into those quadrants, also, for recreation when they're locked out.

Q Where are the officers located during lockout?

A One officer's assignment is on the bridge. He is the A officer. He answers the telephone, does all the administrative work and opens and closes the security gate to the floor.

The two other officers on the floor, essentially for patrol and supervision, but many times because of the activity

placed on the A officer, one of these officers must stay on the bridge to assist him during the peak hours.

The other officer is supposed to make the patrol through the whole floor.

Q Could any one of those officers observe each and every cell on the floor during lockout?

A No.

THE COURT: Well, I think what you really want to ask is not whether anyone can observe each and every, because obviously he couldn't see behind himself as well as in front of himself, but whether there is any arrangement by which you could have reasonably limited number of officers who could see all the cells at one time.

THE WITNESS: They'd still have to patrol.

Q During lockout, are the floor officers who are on the floor during lockout ever called to emergencies in other parts of the institution?

A They're not called to emergencies from other parts of the institution, but they're called to emergencies on the particular floor that they're on. There may be a fight that occurs, an inmate might cut his wrists and that officer goes there. The officer is distracted for a good part of his patrols because inmates have questions to ask him. They stop him and ask him about when he is going to court and what

about his commissary and he wants to see the doctor and all that. That hampers the officer's patrol because he stops to answer questions as he patrols.

Q Have you formed an opinion whether or not an optional lockout system can be established at the institution?

A Yes, I have.

Q What is your opinion?

A That it cannot.

Q What is the basis for your opinion?

A Improper supervision and administrative problems.

Q Could you elaborate?

A Well, administrative problems. During the peak hours of the day there is a lot of movement of inmates to court, returning from court, counsel visits, special visits, probation parole interviews and the like. If an inmate chose to lock in in one of those cells, it would add another burden on the busy officer. He would have to locate the inmate, cause more noise in the institution trying to get his attention, and when he found out where he was, he'd have to go to that area to lock him out.

As far as security problems, there is a risk of a suicide at that time of the day. Because the officer is distracted from his patrols and most of our suicides occur when inmates are locked in.

Just recently, about a month or so ago, we had such a suicide in the E or the F section.

During lockout one of the inmates concealed himself in the cell and when the officer made his patrol, he didn't know he was in there and the inmate hung himself.

Q Are you referring to the Wing suicide?

A Yes, I am.

Q Do you know whether or not Mr. Wing was examined when he entered the institution?

A Yes. He was considered to need mental observation. I think perhaps he was even determined to be suicidal. He was on the tenth floor where we keep these type of cases and the psychologists examined him and said he was okay, that he could go into general population.

He was transferred down to this particular floor and subsequently committed suicide.

MRS. SHAPIRO: Your Honor, I would like to just object to the characterization of the psychologists' report. I don't think Mr. D'Elia is necessarily an expert on the medical issues involved here.

THE COURT: I don't know if he purports to be. I don't know if he is correct in saying there was a psychologist's report or not. He doesn't say he's a psychologist or that he, Mr. D'Elia, said the man was all right. He just said there was

security institution I say yes.

Q Do you believe that even if you have more classification information about the inmates in the Tombs they still would all require the same degree of security?

A Yes.

Q Mr. D'Elia, are the cells at the Manhattan House of Detention maximum security housing?

A That's correct.

Q On the third floor of the Tombs there are dormitories for sentenced help. Would you characterize that as maximum security housing?

A No, it isn't maximum security.

Q Are dormitories in general not maximum security?

A That's correct.

Q Yesterday, Mr. D'Elia, Commissioner Malcolm testified that the Bronx House of Detention is half dormitory. Does that mean that half of the inmates at the Bronx House of Detention are classified or housed in less than maximum security housing arrangements?

A That's right.

Is there any significant difference between the inmate population in the Bronx House of Detention and at the Manhattan House?

A No, there is no significant difference.

Q Does the Bronx House of Detention have more of a record of disturbance, of more disturbances than the Manhattan House of Detention does?

A They have had many disturbances in those dormitories.

Q Has the Manhattan House of Detention had many disturbances in the past?

A They're of a different nature.

Q Is it true that the visiting booths at the Manhattan House of Detention are maximum security visiting --

A Yes, they are.

Q -- booths? Is it true that experts such as the American Correctional Association recommended contact visits even in some institutions which are maximum security institutions for some inmates?

A I haven't read that. It may be in there, I haven't read it.

Q If it were, assuming it is in there, what would your opinion of that statement be by the American Correctional Association?

A I rest on my testimony so far.

Q You would say that if the American Correctional Association said that that they would be wrong?

THE COURT: I don't think it's a question of right or wrong. It's a difference of judgment in the matter, that's

all.

A That's a general book. They write a general book about all institutions. I'm talking about one specific institution of my knowledge of that plant.

Q Mr. D'Elia, in your opinion, is the level of anxiety or tension that inmates feel in the Manhattan House of Detention a factor in security there?

A Yes.

Q Would you say that because there is a great deal of anxiety that that might present a security risk for the institution?

A Yes, it always may.

Q In your opinion, do you think that having a contact visit might reduce anxiety and tension for inmates?

A It might.

Q Do you think that from that point of view a contact visit might have a positive affect on security?

A It might. It might have a negative effect, too. I have seen negative effects from positive visits, too.

Q Where have you seen this?

A In my experience at the Riker's Island Reformatory.

THE COURT: What kind of negative effects are you referring to?

THE WITNESS: I see the visitor going out crying and

the inmate being very depressed.

THE COURT: Can't that happen in any kind of visit? I don't see why that is caused by contact or not.

THE WITNESS: It could, but I think there is a certain type of an emotion that prevails when you are face to face. It could be good and it could be bad.

THE COURT: You mean the emotion is more intense whatever it is, is that it?

THE WITNESS: Yes, I would say so, yes.

Q Mr. D'Elia, in making a decision on whether or not to allow contact visits from a security point of view, did you consider this possible positive effect of the contact visits in arriving at your decision?

A Yes, I did.

Q In making this consideration, how important do you think it is to an inmate to have a contact visit?

A Well, the whole priority of things, I would say it's not that important right now.

THE COURT: You say not that important. To the inmate or not that important to the decision of the problem that you have to make?

THE WITNESS: We realize the importance of contact. In the institution we have installed telephones on the floor so we could have more contact. We permitted the children to

come to visit because we realized the emotions that are involved. So we have moved in this direction voluntarily.

THE COURT: We understand that but when you say that -- I think the question that Mrs. Shapiro was how important do you, as a representative of the Correctional Department, believe that contact visits are for the inmate in making your assessment as to what you ought to do? I mean, you might think it is important but other things are more important. But do you consider them to be important from the inmate's point of view?

THE WITNESS: I would say for the most part they would be important for the inmate's point of view. I have known inmates that don't want to see anybody. But generally I would say that the general inmate population would probably want them.

Q Would you say that they were more or less important than other things such as having more recreational facilities in the prison, for example?

MR. KUNIS: Would counsel please clarify the question as to whom it would be more important to?

MRS. SHAPIRO: The inmates.

MR. KUNIS: Your Honor, I believe, unless the witness has special knowledge to this, the answer would be too speculative.

Sing is, what its function is in the New York State correctional setup?

A I don't know what it is now. But when I knew about it it was a reception center.

Q Does that mean that inmates would come there for a short time and then be sent to some other institution?

A Yes, they would get a work-up, they would get classification reports and then they would be farmed out to the various institutions, whether they'd be maximum, medium, minimum.

Q Mr. D'Elia, in your study of the contact visits upstate, did you find out that Sing Sing has open contact visits?

A I have not studied contact visits upstate.

Q You have not studied it. Now, concerning contact visits at the Tombs, one thing which you mentioned as being a problem was contraband. Now, when you worked or from your information of contact visiting at the sentenced institutions on Riker's Island, has contraband ever been passed?

A I would say it's possible.

Q Do you know how often contraband has been passed during any of those visits?

A No. In my investigation I went on, we heard that it was coming in certain ways. We were never able to catch anybody.

Q So you can't give an answer to that.

But you do believe that there may have been some contraband passed?

A I know it was passed.

How do you know?

A Because we used to find hypodermic needles stashed away in the institution. There's no need to have a hypodermic needle unless narcotics is coming into the institution.

Q Do you know that the narcotics came in through the contact family visits?

A I used to get reliable information from inmates and other sources that they are being passed with the balloon when the visitor and the inmate kissed.

Q Do they still have contact visits at Riker's Island?

A Yes, they do.

Q So that even balancing this risk of contraband being passed, the department has decided that contact visits should continue?

A Yes.

Q Mr. D'Elia, can the danger of contraband, drug contraband now I'm speaking about, be minimized by searching the visiting area after visits and by searching the inmates after visits?

A Yes, it can.

Q Is this done at Riker's Island?

A Yes. There's a complete change of clothing in the gymnasium before they go in and they change again when they come out again.

THE COURT: In other words, change back to their original clothing when they come out?

THE WITNESS: Yes. When we did it we had a locker -- the gymnasium was adjacent to the visiting area. The inmate came in, he put his inmate clothing in the locker and he was given another set of institutional clothing.

He went into the visiting house. After the visit, without him making contact with anybody else he was marched to the gymnasium floor. He stripped, left the clothing there and that went to the laundry. He got a body search, put his clothing on and was sent back to the housing area.

THE COURT: Right.

Q Mr. D'Elia, you mentioned that there's a waiting area for inmates in the visiting arrangement in the Tombs.

A Yes.

Q How big is that waiting area?

A It's not very large. I would say it's about seven feet across. It's part of the corridor, and it runs maybe about twelve to fifteen feet long and has a partition separating it from the other side.

THE COURT: What's the room on the ground floor? Isn't there a room on the ground floor that is connected?

THE WITNESS: That's the visitors' waiting room.

THE COURT: What were you just describing?

THE WITNESS: I'm talking about the second floor adjacent to the kitchen.

THE COURT: That's where the inmates are?

THE WITNESS: That's the inside visiting for the inmates, yes.

THE COURT: Okay.

Q Mr. D'Elia, if the time for visits were spread out throughout the day, wouldn't that reduce the number of inmates who received visits at any one time?

A Of course it would.

Q Wouldn't that make the number of people who might have to be searched at a contact visit smaller at any one time?

A Yes.

Q You stated earlier that if there were to be contact visits at the Tombs you would have to enlarge the waiting room for visitors. Why would you have to do that?

A Because there's insufficient room in there right now.

Q So that has nothing to do with contact visits?

A Yes, but right now we have more people visiting than ever before and we would have more people visiting under contact arrangement.

Q Why is that?

A Because it's more comfortable and convenient and a lot of people just don't like to possibly visit that way.

THE COURT: Have you ever made an actual study of that or is that just your opinion?

THE WITNESS: That's just my opinion.

Q Mr. D'Elia, are inmates ever searched after any kind of visits? Are there any kinds of visits at the Tombs after which inmates are searched now?

A Inmates are supposed to be searched when they come back onto the floor again. Just a frisk, a pat-down.

Q After a regular visit now?

A Yes.

Q What about after a trip to court or a visit with counsel?

A They get patted down.

Q What about after a visit with some kind of social service volunteer?

A Usually they get patted down.

Q Mr. D'Elia, is there a possibility that contraband could be passed during a court visit or an attorney visit or a

visit when some kind of social service volunteer --

A It's always possible.

Q Yet you don't do strip searches after those visits?

A Physically impossible.

Q And you feel that those visits are important enough so that you allow them even without the strip searches?

A I don't think we have any control over it. The probation officer, parole officer, counsel, have a right to visit whether we like it or not.

Q Does counsel have a right to visit in a contact visit?

A Yes.

THE COURT: What about volunteers, how many volunteers approximately a day would you say visit?

THE WITNESS: It's hard to say.

THE COURT: Can you give me some range?

THE WITNESS: We have so many activities. Perhaps the warden would be more qualified to answer that.

THE COURT: In any event, when they do come in, are they searched in anyway?

THE WITNESS: The volunteers? No. We don't permit them to bring packages into the institution, no.

THE COURT: I see. What about pocketbooks and things like that?

THE WITNESS: I think they have a procedure where they don't permit that, either.

THE COURT: They check them or something?

THE WITNESS: They secure them. But I think the warden could answer that better.

Q Mr. D'Elia, assuming that in some fashion drug contraband got through an open visit and an inmate took the drug, would the presence of an inmate who's high on drugs be noticed by the correction officers in the institution?

A It probably would if he lived long enough for us to find him.

Q Could such an inmate be denied future contact visits?

A I would say that if he had them, he would be prohibited from contact visits.

THE COURT: Are you concerned about overdose?

THE WITNESS: Yes.

Q Wouldn't the threat of losing contact visits have a deterrent effect?

THE COURT: Again, I think you are asking questions that we can all answer.

MRS. SHAPIRO: All right.

Q Mr. D'Elia, with respect to other types of contraband, such as guns, knives or weapons being brought in by visitors, couldn't the presence of such weapons be detected by

the use of metal detectors and searches of visitors' bags or packages?

A I suppose they could. I don't know how accurate these metal detectors are. I haven't made a study of them.

THE COURT: Wouldn't the risk of that kind of stuff be pretty well eliminated by your change of clothing for the inmate? What's he going to do with a gun?

THE WITNESS: Yes, but we don't know if he is going to use it while he is in the visiting house to make a break from there with a hostage. That I don't know.

Q Do you know as a result of the report on Greenhaven visiting whether metal detectors and searches of bags and pocketbooks are routine procedure for contact visits there?

A My understanding is that they do have a metal detector there.

Q Mr. D'Elia, isn't it true that there are portable, hand-held metal detectors which can be used even if there isn't one installed in the institution?

A Yes. As I said, I don't know how accurate they are. I read recently in the paper the skyjackers got on the plane with guns and they were -- they went over them with a portable metal detector, so I don't know how accurate they are. Whether it was a bad search of the person.

Q Mr. D'Elia, has anyone in your department discussed

contact visits with the warden at the West Street Federal House of Detention, to your knowledge?

A I think somebody has.

Q Recently?

THE COURT: That's such a vague answer, there is no point in pursuing it.

Q Have you personally ever discussed the contact visit program with representatives of the New York State Department of Correction?

A No.

Q Mr. D'Elia, you stated that it was your information that there may have been some problem with contraband at Greenhaven as a result of the contact visits. Do you know whether or not contact visits have been discontinued at Greenhaven?

A I don't know what they have done.

Q Were they in effect at the time your representative visited there?

A I'm not sure. I think they were.

Q Mr. D'Elia, do you know of any instance in which guns or other weapons have been smuggled to inmates through contact visits at the facilities on Riker's Island?

A No. A recent report the warden gave me, though, is that they found in one of the toilets, they did find a gun

in one of the toilets when they serached it before inmates swept.

Q That was in the visitors' area of the prison?

A That's right.

Q But it couldn't have been given to the inmate at a contact visit if it was in the toilet.

A Well, it wasn't a contact visit at that time. It was a booth visit.

Q I see. Mr. D'Elia, you mentioned your fear that hostages would be taken.

A Yes.

Q At contact visits. Do you know of any time during which hostages have been taken during contact visits at Riker's Island?

A No.

THE COURT: Let me ask a much larger question. Do you know of any instances in which hostages have been taken in any visiting situation?

THE WITNESS: I think several months ago in Massachusetts an inmate had a contact with his wife. She passed him a gun. I think he shot some jail officials. He subsequently shot his wife and then committed suicide.

THE COURT: This wasn't the Charlestown jail you are talking about?

THE WITNESS: I don't know which one it was. It was several months ago they had such an incident in Massachusetts.

THE COURT: Is that the only one you know about?

THE WITNESS: The only one I know about is George Jackson. Allegedly his attorney brought a gun.

THE COURT: I m aware of the Jackson situation. Are those the only two you know of?

THE WITNESS: Yes.

THE COURT: To be factual about it, you have been in this -- and not to minimize the seriousness of those episodes but just to find out the stories -- those are the only two instances of which you are aware in your career, right?

THE WITNESS: Yes.

Q Mr. D'Elia, exactly how do you think a hostage could be taken during the visit if the visitor was gone over with a metal detector and his bag searched and the inmate has his clothes changed before the visit?

A It's hard for me to say. First of all, how they could get something through there. They might get something through and then they might have some kind of a weapon. You could have a comb sharpened up with -- to a point. You could keep it at somebody's throat and there are other things.

They don't have to be metal to be weapons.

Q Mr. D'Elia, you mentioned that there are contact visits at the sentenced institutions on Riker's Island. Are there any contact visits at the new Women's Correctional facility on Riker's Island?

A Not that I know of.

Q Mr. D'Elia, you also mentioned that at present there are two hundred visits per day at the Manhattan House of Detention. Wouldn't the number of visits be reduced when the population is reduced?

A I would hope so.

Q You also stated that the average stay was shorter many years ago than it is now. Do you know that for a fact or is that just your impression?

A I know that for a fact.

Q Have drugs ever been found in the Manhattan House of Detention?

A In the institution proper?

Q In the institution proper.

A I can't recall.

Q Is it ever possible to eliminate a contraband problem in an institution?

A I would say no.

Q Mr. D'Elia, you testified about inmates taking bed

springs and turning them into weapons and making guns out of soap. Do these things have any effect on contact visits? Do contact visits have any effect on this type of problem?

A The gun I would say yes. The gun maybe and maybe even the other weapons.

For example, that book, that's an English book, and perhaps if an inmate came down from the floor with an English book under his arm the officer wouldn't even search it and let him go in there, such an innoculous thing. And once he got in there he could open it up and have a gun on somebody's head.

If the inmate is supposed to change his clothing and there are careful security checks, why would he be allowed to bring an English book through a contact visit?

A We don't have any areas in the institution where we could do all those things.

THE COURT: In any event, that risk would be equally true, wouldn't it, in a sentenced institution?

THE WITNESS: Yes. But I'm talking about our sentenced institutions. The people are there for very, very short terms and they are not desperate.

THE COURT: But what I mean is, we're all agreed that there appear to be contact visits at Greenhaven. The same kind of things could happen at Greenhaven, couldn't it?

THE WITNESS: Yes, but there would be less likelihood of getting out of Greenhaven than there would out of Manhattan.

THE COURT: Of escape, you mean.

THE WITNESS: This is why I say opportunity makes people desperate. A person may want to escape. If he's in a place he can't escape, he will put it in the back of his mind and wait for the first opportunity.

THE COURT: What you are saying, it's much closer to the doors in the Tombs than it is in Greenhaven?

THE WITNESS: That's right.

Q Mr. D'Elia, if you had more correctional officials to do searches, would that make a difference in whether or not you could have contact visits?

A It's not a question of more, it's a question of quality and training and space.

Q I believe you also stated that to have contact visits you would need more visiting rooms themselves, is that correct, more visiting area itself?

A Well, if you are familiar with Manhattan, you couldn't possibly -- you don't have a contact area unless you rip out -- if you're thinking of the same physical area -- you would have to rip out the existing booths from both sides and that would have to be the contact area. That's the way I would

envision it.

Q If you were to change from the type of visiting you now have to contact visiting, at least for some inmates, wouldn't it be appropriate to rip out at least some of the booths and turn it into contact visiting area?

A As a philosophy of a prison administrator, you treat all inmates alike. You don't treat one one way and one another way. You always have problems when you do that.

THE COURT: Wouldn't you put it slightly differently, treat all persons in the same circumstances alike, but if a person made an attempt to escape, you would treat him different?

THE WITNESS: If you had a traffic violator, and gave him a special privilege, he may be the guy that breaches the security. We have had derelicts in the institution and because the officers were a little squeamish about searching their clothes, somebody would give him a pack of cigaretes to conceal narcotics. So even though the derelict was harmless, he may be used by somebody else for something.

THE COURT: I don't think anybody is disputing the fact that all people who have contact visits ought to be searched, if that's what you are trying to bring out.

Can't you conceive of the possibility that you might have a classification system which indicated that some people

were better risks than others and you would allow contact visits for those with adequate searches and noncontact visits for others?

THE WITNESS: It would create problems in the institution. Not only from the point of view of inmates, you will have the haves and have nots because even though we make a decision and say he's not entitled, he will say why am I not entitled? I think I am. That's number one.

And the second thing, the way to eliminate these problems is to have diversified types of institutions. No matter who you have in the maximum security institution, unfortunately he has to be treated maximum security. So the solution is to have minimum, maximum and medium types of securities. And in the minimum security institution, you could let everybody have the freedom of the institution and have all these programs.

Q Mr. D'Elia, do I understand you to mean by this answer that you do not think the classification system in Manhattan classifying some inmates as maximum and some as medium and perhaps some as minimum security would be desirable?

A A classification system depends on the intelligence information. That's number one.

The second thing, a person's classification, even if you had it, could change to a higher or lesser

from home that his wife is fooling around or his son died or something like that, he might commit suicide or at that moment try to do something desperate.

Q Wouldn't that also be a possibility, if he were in a maximum security institution rather than a minimum security area of an institution?

A Yes, but what I'm trying to say, this whole idea of classification essentially doesn't apply to a detention population unless somebody could tell us where we're going to get information on an inmate to classify him. The only thing we get is a yellow sheet on him and if anybody has ever seen it, there is no disposition on these sheets. We know nothing about this man and we have no way of knowing anything about him so how could we classify?

THE COURT: I take it you could go beyond that. It is your view even if you did have a decent classification system and even if you could sensibly classify people maximum, minimum and medium security risks, if they're all put in one institution you have to have a certain general level of treatment regardless?

THE WITNESS: Yes.

Q Mr. D'Elia, on the general issues of security, do you think that the amount of recreation and physical exercise an inmate has is related to the security of an institution?

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES RIEM, ET AL.,
Plaintiffs

against

BENJAMIN J. MALCOLM, ET AL.,
Defendants

70 Civ 3962

Before
HON. MORRIS E. LASKER,
District Judge,

New York, N.Y.
February 8, 1973-3 p.m.

APPEARANCES

JOEL BERGER, ESQ.,
BARBARA SHAPIRO, ESQ.,
Attorneys for Plaintiffs

NORMAN REDLICH, ESQ.,
Corporation Counsel of the
City of NewYork;
By: JAY A. KRANIS, ESQ.,
RONALD ZWIBEL, ESQ.,
LEON KATZ, ESQ., of Counsel

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THE COURT: Let me make a statement for the record before we proceed and then lets proceed informally.

At the conclusion of the last formal hearing, Warden, I suggested since one of the issues still outstanding in this largely settled litigation, and perhaps the most important one, is the question of the physical arrangements for visitation.

It would be relevant, at least to my decision, to find out what the arrangements for visitation are in this institution, bearing in mind I will, and the parties are free to argue, the Federal Department of Detention and its problems and the Tombs and its problems.

I thought the most effective way for us to do this would be to visit you and allow you in a narrative form simply to tell us what the arrangements are here and perhaps also to give us a visual demonstration of the places of visitation and so on and I think there is more than one method of visitation if I am correct and then to allow counsel on either side to ask you such questions as they think are necessary to fill the situation in and maybe I will ask you a few.

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The most useful think you could do would be to simply tell us in your own fashion what the terms of visitation are.

WARDEN GENGLER: We have, I would say, a very flexible visiting program, based on the fact that we have a large number of people here who are from the major metropolitan area and who do get a good number of visits.

Until about four months ago, we were restricted strictly to visits conducted in the visiting room which we will see through a phone setup with a glass partition between the visitor and the prisoner.

THE COURT: Which is approximately what they have at the Tombs.

WARDEN GENGLER: And I am not sure of the number of seats. We can get that.

In terms of visiting regulations, each prisoner is permitted two one hour visits per week. In our guide lines also, because of our increased crowdedness, is a stipulation that on weekends when we experience most visitors, it may be necessary to limit the visits to one half hour and on occasions, to fifteen minutes and it has occurred that we permitted people as few as ten minutes.

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THE COURT: Is the period of time of a visit strictly a function of the number of visits?

WARDEN GENGLER: Exactly.

THE COURT: Or the number of visitors?

WARDEN GENGLER: It is determined by the number of visitors waiting to see the people and also the crowdedness of the visiting room. The most severe crowding occurs on weekends. During the week if it is not crowded, we will let the people visit as long as they want. Conceivably, four and five hours.

Again, we try to stay within these guide lines.

Since we moved down here about four months ago--

THE COURT: You mean since you personally moved your offices?

WARDEN GENGLER: Yes. We were also able to expand the number of attorney booths to four as opposed to three where we were before. Again, in an effort to accommodated the overcrowded visiting room, we instituted a contact visit program, which by the way, is in existence in every other law institution. This is the only facility that has the telephone system.

Contact visits are conducted each morning

between eight and ten. We found that attorneys don't show up until ten or ten-thirty so we capitalize on those two hours each morning during the week and schedule any where from six to eight people four contact visits with the family, wives, loved ones, etc.

THE COURT: I am particularly interested in knowing how you decide who is entitled to a contact visit.

WARDEN GENGLER: Contact visits are approved by our classification committee. A man submits a request indicating the person who he wants to visit with, the dates, the times possibly he can select. It goes to this committee, they study the case and more often than not we know the man. We are a small little place with as few as 375. Usually it is somebody who has been here the longest. We have a priority. The men who have been here the longest gets the visits first, then they stagger themselves in that order.

THE COURT: Is that determination that the men who have been here the longest, is that based upon the fact you know the reliability of the man best and also he has been deprived of contact for that much longer?

WARDEN GENGLER: Right. We may have a man that comes from one of our institutions and he may come from a camp, so we are not too concerned about his custody or security.

We pay particular attention to the people about whom we know very little and we may have to interview the man or the social worker may have to interview the man and find out more about him. We may have to make a few calls. We are able to accommodate as many as eight per day, roughly 40 a week and the waiting list is not long at all.

THE COURT: Putting aside questions of priority who could have contact visits; if there isn't enough space for everybody to have contact visits, can you give me an idea of a case or cases in which there was even enough time for contact visits, ;you would turn a man down for contact visits?

WARDEN GENGLER: There is no case we would turn a man down for contact visits. If it is difficult, we will schedule around that.

THE COURT: Would that be true even of the people that you hold in what you call maximum security?

WARDEN GENGLER: Yes. We have contact visits with people who had been declared psychotic, 4246's,

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THE COURT: What about people here on narcotics charges?

WARDEN GENGLER: Sure. Forty percent of our people are narcotic violators and if we were restricted to that, we would be out of business.

We do take extra precautions in those cases.

THE COURT: Will you tell me what they are?

WARDEN GENGLER: As an example, we have a man who has been given much publicity, Mr. Ricord.

THE COURT: Yes, he has.

WARDEN GENGLER: He had a contact visit. His daughter and his neice came here. He was under very close scrutiny. We didn't intimidate him, we didn't badger him but we knew where he was, we checked the people out, we checked him out.

THE COURT: What does that mean?

WARDEN GENGLER: Making sure that the neice here is his neice and that the daughter is his daughter and we have verification through an attorney, through the strike force.

THE COURT: What kind of a search of them/

WARDEN GENGLER: None.

THE COURT: What about Mr. Ricord?

WARDEN GENGLER: Strip-shaken. We have a

capacity to strip-shake every man when he comes from a contact visit if we feel it is necessary.

THE COURT: And that would consist of what, taking off your clothes?

WARDEN GENGLER: Disrobing.

THE COURT: Body search?

WARDEN GENGLER: Examination of the body orifices, but it is somewhat kind of rediculous. A man could have a contact visitor out here and we could search him when he goes back through there, but if anything is passed, he could pass it to somebody, some other prisoner.

We really rely on our knowledge of the particular prisoner involved as well as knowledge we have about the people who are doing the visiting. To this point we have had no introduction of contraband through that contact visiting program.

THE COURT: How did you happen to decide on this change of policy?

WARDEN GENGLER: Well, It think it is more humane, it is in keeping with my policies of running a institution. It is unbearable to me to go to a visiting room and see a wife talk to her husband through the telephone. To our way of thinking, that has gone

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out a number of years ago. We have had people come from our own institutions that have been trusted in an open visiting situation and I feel it is in keeping with proper penology.

THE COURT: And you have the backing of the Bureau of Prisons?

WARDEN GENGLER: By all means.

THE COURT: Is there anything else that you believe we ought to know before we actually take a look at the places of visitation?

Q WARDEN GENGLER: I think I commented on the need for the staff to know the prisoner which comes about only through rapping with them.

THE COURT: Perhaps in that regard I ought to get some information about your staff ratio to prisoners. Assuming a average of what, 350 people?

WARDEN GENGLER: 350 with a total complement of 90, and again I might add that the staff-prisoner ratio can be very deceiving. It depends what kind of people you have and I might add we have people here serving life sentences. We have youngsters as young as 16.

THE COURT: I think I should clarify for the record. You don't mean they serve their life sentences

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at west street?

WARDEN GENGLER: They are here in transition. The classification committee does approve and look at and examine these people and that committee consists of a social worker, a correctional conselor, the operations lieutenant and anyone else who might be able to give some input into this.

THE COURT: Thank you. I have asked the questions that occurred to me at the moment.

Does anybody else have any questions?

BY MR. BERGER:

Q How long do men stay here on the average?

A Depending upon what type of cases you are considering, and there are those at both extremes. We come up with an average of 45 days. That would include men who come here over night and go out the next morning and we never see them again. It includes people who are here for complicated cases for as long as two years. The record since I have been here has been two years to the day, but these cases were very complicated and they were witnesses.

Q What I am getting at, when you say you give priority to those who have been here a long time, I wanted to get some definition of what you meant by a long time?

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A Three months could be a long time for a routine case.

Q What plans are there for visitation arrangements at the new Federal Detention facility that is going to be built?

A The picture is right behind you. The one in the middle at top will give you an idea of the housing arrangement. Visiting will be conducted on each floor. There will be ten different units. Each unit will have its own multi purpose visiting area. It will be used for recreation, for visiting and open contact visits just like we have out here throughout the institution.

Q Are you going to construct any of thses booths with the phones in the new institution.

A None.

Q So it would be correct to state that once the new institution is opened, there will be one hundred percent contact visiting for all inmates in the new Federal Detention Center?

A Right.

Q This institution will no longer exist?

A That is the plan, to abandon this.

Q There won't be any of thses telephone booths visits for Federal pre-trial detainees in New York City?

A Right. Maybe I made too much of a bland statement

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before that there were no conditions we would deny a man contact visits. If we had an acutely psychotic individual and even when we had those, we arranged for a visit to be conducted in our hospital, even if it meant putting an individual in restraining equipment.

THE COURT: I think we would all recognize there might be some special and extreme cases in a contact visit, for the protection of the visitor, occasionally it might be necessary.

Q Can we have for the record what are the visiting hours at this institution?

A Ten o'clock in the morning--for our phone visits, it is ten a.m. until 3:30 p.m. That is every day of the week, holidays included and in our contact visits, eight to ten in the morning five days a week.

THE COURT: Does a visitor have to make appointment or just come in and take their chances?

WARDEN GENGLER: When a man comes in the institution, he submits a list of those which he wants to correspond with and from whom he expects to have visits. That is maintained. The visitor comes in and identifies himself or herself from the list and moves right in.

Q Ten a.m. to 3:30 on Saturday and Sunday?

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A Right. We are hoping, I think this summer, when we get some good weather to experiment with evening visiting. The reason we backed off on it thus far, we are not in the best area down here and I have some real concern about families coming down in this area.

Q Did I understand you to say that on a light visiting day, the visiting may last longer than an hour?

A Yes.

Q You said four or five hours?

A Let's say on a day there weren't many people in there. A family comes in at ten o'clock in the morning. If it is not crowded, they could conceivably visit from ten o'clock in the morning until 3:30 in the afternoon. You need to visiting officer in there anyway, so whether you have one or fifteen, it makes no difference and why pull the rule on them, let them visit

MR. BERMAN: No further questions.

THE COURT: Mr. Kramis?

EXAMINATION BY
MR. KRAMIS

Q You said you could accommodate approximately six to eight people per day contact visits and forty per week. You also said the list is not very long. Does that mean that many of the men aren't interested in contact visits?

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A No. I think it means we are able to accommodate those people who do ask.

THE COURT: I suppose a certain percentage of people don't have any people in the area to visit them?

WARDEN GENGLER: There is a good number of those. Of course, a lot of people request contact visits or for one reason or another they are not here.

Q How often will a man have a contact visit, can it be more than once a week?

A It is unlikely. If we have a light day and the list is caught up, fine. I have gone out here and picked people out of the visiting room and brought them in here or people waiting out there during the day when we don't have attorneys in here at two o'clock in the afternoon, a counselor will bring a mother or somebody in here and we will see there are no attorneys.

Q In the normal course of events, how often wou a man that is interested in a contact visit have a contact visit?

A Once every two weeks.

THE COURT: That is limited by the amount of space in this facility?

WARDEN GENGLER: Yes.

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THE COURT: You may be able to do it more often in the new facility?

WARDEN GENGLER: I would like to set up almost an unlimited visiting procedure. If we had the space here, I would certainly institute an unlimited visiting procedure.

THE COURT: Do you have any substantial variation in population atthe new facility?

WARDEN GENGLER: More people?

THE COURT: I didn't know what you meant when you said you would have to see how the population is.

WARDEN GENGLER: In a sense we will have ten visiting rooms and there will be forty men in an area.

THE COURT: That will be your capacity but do you anticipate because of a larger capacity, you will have more people?

WARDEN GENGLER: I would expect by the time we get there, we will pretty well have it.

THE COURT: Do you use people from areas you are not now housing them from?

WARDEN GENGLER: We are looking at this point people who we could squeeze out of there for what

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I feel we will have more than 447, whether it be the womans section, immigration, whatever. In effect, this is ten different visiting areas.

Q You mentioned your classification committee. Without this classification committee, would you allow contact visits?

A Yes, I think we would, because I think we could perhaps have less input. We would have to do a little more checking, I think.

Q How would you check? Where would you check?

Aq We would just talk to the quarters officer, the work supervisor if a man is on a job, even call a probation officer.

Q Are there probation reports on the people in the institution?

A Those who have been sentenced we will eventually get those.

THE COURT: Most of your people are not sentenced?

WARDEN GENGLER: Yes. By the time we get the pre-sentence report, they may be on a bus on the way to Lewisburg. The big factor in this whole thing comes from our staff's knowledge of Joe Blow. We know he eats, we know him or get to

know him pretty well. We are small, our officers are instructed to get to know these people, to rap with them, to talk with them, to answer their questions and very , very little goes on here that we don't know about.

THE COURT: Let me ask you this: You have had several people who have escaped from the institution in the last two or three years, I don't know how many, maybe three instances.

WARDEN GENGLER: The last group was on January 24, 1971 at which time we had the seven leave from the roof.

THE COURT: In regard to the instances which occurred, I don't know how long you have been here, but while you have been here, have you any reason to believe that the escapes were facilitated by visitors?

WARDEN GENGLER: No. It is a pure and simple matter of secreting a hacksaw blade and cutting through a bar.

THE COURT: There is no reason to believe the visitor brought in a hack saw blade?

WARDEN GENGLER: At that time we had no contact visits. Somehow that blade got in. It could well

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have been a secreted one, old, rusty

Q Does the physical structure of the building play any roll in whether or not you can or you cannot--forgetting about desires-- but whethere you can or cannot allow contact visits? Does this building limit you in the number of contact visits you can allow?

THE COURT: You mean outside of the space itself?

A The space limitation is the big thing. If I had an auditorium or space the size of an auditorium, I would make it into a visiting room. The highest priority I would have now would be committed to visiting. To me it is that important and I think too, we have a telephone program here, a open telephone program and I think that contributes a lot toward maybe reducing visits when the guy can get on the phone and call his wife once a day. I think that contributes substantially to a reduction of visits. But sheer space is what we are fighting.

Q Is there any problem with transporting inmates through the institution for visiting?

A With the exception of those men in the maximum security unit, a man is called for when his visitor comes in. The control room officer calls on a loud speaker and wherever he is, he comes down to the visiting room unescorted

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with the exception of the max case.

THE COURT: The transportation problems in the Tombs are infinitely greater than they are here. It is possible, I can say safely having been here on previous visits and I think the Warden will back me up, there is no transportation problem for anybody not maximum security. He simply walks in two minutes down the steps and he is here.

WARDEN GENGLER: This is why we are going to the unit visiting systemnthere because we are going to have eight stories and rather than hassle transportation on elevators, we will get the visitors up on what is known as a non-secured elevator and they will visit right in the area.

Q How do you determine who is a maximum security prisoner?

A Again getting back to knowledge about the individual. If he has extremely high bail. If we know he is an escape risk, an assaultive individual, he might escape or might assault somebody; all of those are factors that would mean in and of itself the man is a maximum security risk, and it may not. We have had man with $400,000 bail and we have men with a thousand dollar bail we have put in maximum security.

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Q Where do you gather all this information from?

A FBI reports, marshalls, arresting agency, our own observations, information from other institutions, marshalls, deputies.

Q If you didn't have access to all this information and all you could go on was the observation of your staff, how long do you think it might take for your staff to make an observation that would satisfy you in terms of being able to appropriately classify an individual and to allow him contact visits?

A A week.

Q Do you transfer inmates from here to the Tombs?

A No. I got here in July of 1970 at which time my predecessor had a policy of occasionally putting people over there. After September of 1970 during that escapage, out of I think six or eight that had been placed over there, I [illegible] the only two remaining people brought out of there and back here and we have not put a man over there since at the Tombs.

Now, the marshalls may well use Kew Gardens, Brooklyn or other places overnight.

Q When you say the marshalls, is that before the people are brought here? In other words, before you get jurisdiction over them?

rk 21 Gengler

A That is right, by and large. On occasion, people have been taken from here and placed in Kew Gardens, Nassau County or one of the other City correctional institutions. We don't take them to the Tombs. The marshalls may.

THE COURT: One of the reasons for doing that is if a man is going to be a witness, for example, and they want to protect him against other people, they put him in a different place.

MR. KRANIS: I have no further questions.

THE COURT: Warden, I think we have gotten all the information we wanted or could possibly ask for. It has been very interesting, very informative and much to the point. Thank you for taking your time and we will look at your visiting room setup now.

department as a whole, and particularly the characteris tics of the population and the type of adminstration to which they are subjected.

Q I believe you indicated earlier that the problem of classification in a detention facility or the problem of classification in detainees is unresolved at the present time, is that correct?

A Yes, sir.

Q Do you consider your study to be a pioneer project in this field?

A I do indeed. I would consider that if we are successful in evolving a viable operational model for the department, that it would be relatively novel and that it would reflect credit on the department and it would be something which should be extended and expanded throughout other comparable facilities in other areas.

THE COURT: Am I to understand that you have not yet concluded whether or not you will be able to develop a classification system?

THE WITNESS: No, your Honor, we are confident that we can do so, but a system which throughout the ocurse of this study, and I hope after the study is concluded, which will be subject to continuing improvement and modification throughout the department's facilities.

it may be a little afield from the central issues here, that the availability of contact visiting on conditions of good behavior can, because of its availability, be an impetus towards good behavior in detention institutions?

THE WITNESS: Your Honor, I have written on this somewhat extensively and I have studied the matter very carefully. I think it is a very valuable therapeutic device. I think that it does much to relieve tensions in an institution, particularly where there is long-term detention involved.

I think that this is a factor to which one can attribute the lack of tension in many of these institutions where pretrial detention is so very extended.

THE COURT: Have you written on the subject in English?

THE WITNESS: I have indeed, your Honor, There is an article of mine in the "International Journal of Offender Therapy" of 1971, relating to the Peruvian system; 'Crime, Criminals and Prisons Abroad".

THE COURT: Where would I be able to --

THE WITNESS: I will make a copy available to you, your Honor.

THE COURT: I would appreciate it.

MR. HERMAN: I have no further questions, your Honor.

THE COURT: Mr. Kranis?

A The lockin, lockout concept is something that is new to me.

For instance, the juveniles at the House of Correction, if I may deviate for a minute, people are generally secured in our institution only for physical head counts which usually are done twice daily. The only exception would be if at sometime we have some kind of a program that we cannot accommodate everyone. If it is necessary for those correctional officers to escort, say, one half of the men down to a particular activity, then, everyone else is locked in. Those are special kinds of situations because you cannot have people roaming around without any surveillance. I think that these are practical problems that all administrators have and you have to look at it.

Q During a normal day, how many hours would an inmate stay locked in his cell in the Philadelphia system?

A Our space problem is quite different so we do have a lot more room than the Tombs, even for the unsentenced prisoner; structurally, we are able to do more. What we attempt to do is offer everyone to get involved in some kind of constructive involvement. If he is attending a group therapy session or he is in

the educational program, sure, he is free to move about. The other residents who may not have jobs are set free to be in what we call a recreation area, which is usually on each cell block. They are permitted to do this during the day. The concept of optional lockups is not something that I can really get a good comparison with. Our facilities are different. We do have more space.

Q During the day in your facilities, if an inmate didn't feel well, would he be able to stay in his cell? If he had a headache and wanted to stay on his bed and read, would he be able to do that?

A Sure, particularly, if he is in the detention status. If he did not want to take part in the activities, he is permitted to stay in his cell. But, we also have correctional officers on that wing whose job it is to patrol.

Q You would not have a setup as you observed today where there is a whole wing with no officers patrolling?

A No, not unless it is an emergency.

Q What you are saying now, applies to all of the institutions?

A That is right. At the Detention Center,

Plaintiffs' Exhibit 12

THE CITY OF NEW YORK
ENVIRONMENTAL PROTECTION ADMINISTRATION
AIR RESOURCES - SANITATION - WATER RESOURCES

Interdepartmental Memorandum

To: Roy Gerson → To John Baker Board of Correction

Date: November 30, 1972

From: Sheldon I. Wilpon, Bureau of Noise Abatement

Subject: Noise Inspection - Tor

On November 17, 1972 an inspection tour was made of the 10th floor facilities of the Tombs (mental observation area). Noise level readings were obtained in representative areas and discussions were held with the supervising correction officers on the noise problem in this cell block area. For the purpose of comparison a similar survey was made of the 8th floor detention area.

1. Observations and Measured Noise Levels

a) Tenth Floor @ 2:00-3:00 p.m.

A majority of the inmates were congregated in groups in the main recreational area. Two large screen TV sets were located on tables near two ends of the area, each tuned to a different station at relatively high volume levels. While there were two groups of inmates watching TV, there were other group activities, such as dominoes, conversation, etc., in other parts of the recreational area. There were small numbers of inmates in the two adjacent cell-block areas, either attending to personal affairs or in small conversational groups.

Under these conditions noise levels were obtained as follows:

Location

Table I

Location	Conditions	Sound Level (dB(A)) Range	Approx. Avg.
Elevator area	TV's on	67-74	72
Officer Bridge Area	" "	69-80	75
Tower A & B cell blocks	TV's on, shower running, few inmates	72-80+	73
Recreation Area	TV's on	75-82	78+
Recreation Area	TV's Off	63-72	67

According to correction officials, the two televisions are on almost constantly throughout the day. Exceptions to this are during "feeding times" and in early morning and late evening hours. During these latter periods the radio is used to broadcast to the inmates in their cells via several loudspeakers at the forward end of the cell blocks. For the test condition reported herein, the inmates were directed to turn off the televisions so that the reported level of 57 dBA, while significantly lower than other conditions, is not considered representative of noise levels in the detention area. Rather this set of measurements was obtained to demonstrate the influence of television on the overall noise level.

Observation of the physical construction of the tenth floor area revealed that all walls, floor, ceiling and tables, benches, etc. were about as "acoustically hard" as one could achieve, resulting in a highly undesirable "reverberant" room area, thereby magnifying any sources of noise.

b) Eighth Floor Detention Area

The eighth floor area was also found to be acoustically hard. Televisions again were the major source of the very high noise levels. The noise levels were aggravated by the fact that the television for each cell block was mounted near the entrance to the cell block, with sound levels set such as to provide reasonable listening conditions further into the cell block, while competing with televisions of other cell blocks also stationed off the central "core" of the floor. As a result, noise levels were even higher than on the tenth floor, as indicated in Table II, below:

TABLE II

Location	Sound Level, dB(A) Range	Approx. Avg.
Center of Bridge	80-87	83
D block, under TV	78-86	81
D block, at telephone station	Peaks to 80	83

2. Noise Level Impact

Determination of the effect of noise exposure levels can be based on the following criteria:

(a) risk of hearing damage or loss;

(b) Interference with speech communications;

(c) Psychologically and physiologically deleterious effects, including annoyance, fatigue, nervousness, general stress, and biological changes affecting general health.

While there has been much research done in all these areas, the criteria for hearing damage and speech interference is, more highly definitive than that of general psychological and physiological effects. However, the following noise impact conclusions can be drawn:

(a) The levels of noise exposure on the 10th floor, especially in the recreational area are such that they would be considered as border-line contributors to the generation of hearing loss from long-term exposures at these levels (see enclosure 1).

(b) All the noise exposures of Table I are sufficiently high that they materially impact on the ability to carry on normal speech conversation. Even the artificial situation created in Table I by turning the televisions off in the recreational area produced a noise exposure level that was marginal in terms of carrying on normal speech conversation, especially in groups.

(c) In recognition of the factors discussed in (a) and (b) above, noise criteria in buildings have been developed and category classifications made as indicated in Table 18.7 of enclosure 2. Note that according to these category classifications, the tenth floor detention area and especially the recreational area have noise exposure levels significantly higher than that allocated to spaces like shops, garages, power plant control rooms, etc. for just acceptable speech and telephone communication.

(d) From a physiological and pyschological standpoint, one might make a personal observation that continued exposure to the 10th floor noise levels can be oppressive, annoying, and provide a feeling of fatigue amongst other effects. However, such personal observations cannot be as readily corroborated by literature reference as the previously discussed criteria. A general discussion of this entire area is found in an internal memorandum (enclosure 3). Enclosures (4) and (5) present some additional information in this area that may be best interpreted by the medical staff assigned to the 10th floor detention area.

(e) Finally, while an eighth floor survey was made only for comparative purposes, Table II noise exposure levels indicate that the entire discussion of "noise level impact" is equally applicable to the eighth floor detention area.

3. Remedial Action to Reduce Noise Exposure Levels

Prime sources of noise in the 10th floor detention area were:

a) the competing television situation;

b) people activity, i.e. group conversations, games, activities;

c) radio broadcasts through the cell areas, when televisions are not on.

These noise sources were reinforced by the very hard, acoustically reflecting or reverberant nature of the building's internal construction, walls, ceilings, etc. Further, the existence of these high noise levels automatically caused an increase in "speech volume" thereby contributing further to the high noise levels.

Remedial action can and should be taken from both the standpoint of reducing source noise and reducing the reverberent characteristics of the room area. In general, both radio and TV source noise can be reduced by the use of low-level loudspeakers, evenly distributed throughout the desired listening area. However, an even more effective means of treating television sources' noise would be to isolate it from areas of other activity. That is, if each television set had its own well defined room, then there would be no necessity for television operation at high volume levels in order to compete with either the other television or other inmate recreational or other activities.

Even if this were done, however, existing noise levels in the recreational area would still be high (see Table I - Recreation Area TV's off condition). An estimated improvement of the order of 12 to 15 dBA can be achieved through acoustical treatment of the room areas (cell block areas and recreational areas). To achieve this both ceiling and wall areas would have to be treated. Rugs on the floor would provide some additional control but cannot substitute for the required ceiling and wall treatment. Experienced acoustical consultants have indicated that to achieve the indicated noise reduction the entire ceiling area would have to be treated and 50% of the wall area would require treatment.

Ceiling treatment can take the form of a suspended acoustical ceiling or treating the ceiling with a fire-retardent, spray on cellulose-fibre, acoustic material. Treatments of this nature have been employed in school buildings and

restaurants, amongst others. One such spray-on material, in various colors is available through the National Cellulose Corporation (12315 Robin Blvd., Houston, Texas 77045, phone (713)433-6761) as K-13 (brochure attached). Cloth-faced, fibre-glass material mounted on boards and hung on 50% of the wall surface appears to be one reasonable way of handling the wall problem. The basic material is available from Owens-Corning here in the City. However, panels would have to be fabricated and hung by a contractor.

SUMMARY

Noise exposure levels in the 10th floor detention area are such that long-term exposure to these levels may cause permanent hearing loss. The levels certainly interfere with normal speech conversation and listening and may very well cause a number of psychological and physiological deleterious effects. Television should be isolated from the main recreational areas and the entire detention area should be acoustically treated in order to get noise levels down to reasonably accepted levels for occupied spaces.

Plaintiffs' Exhibit 14-A

(See opposite) ☞

Plaintiffs' Exhibit 14-A

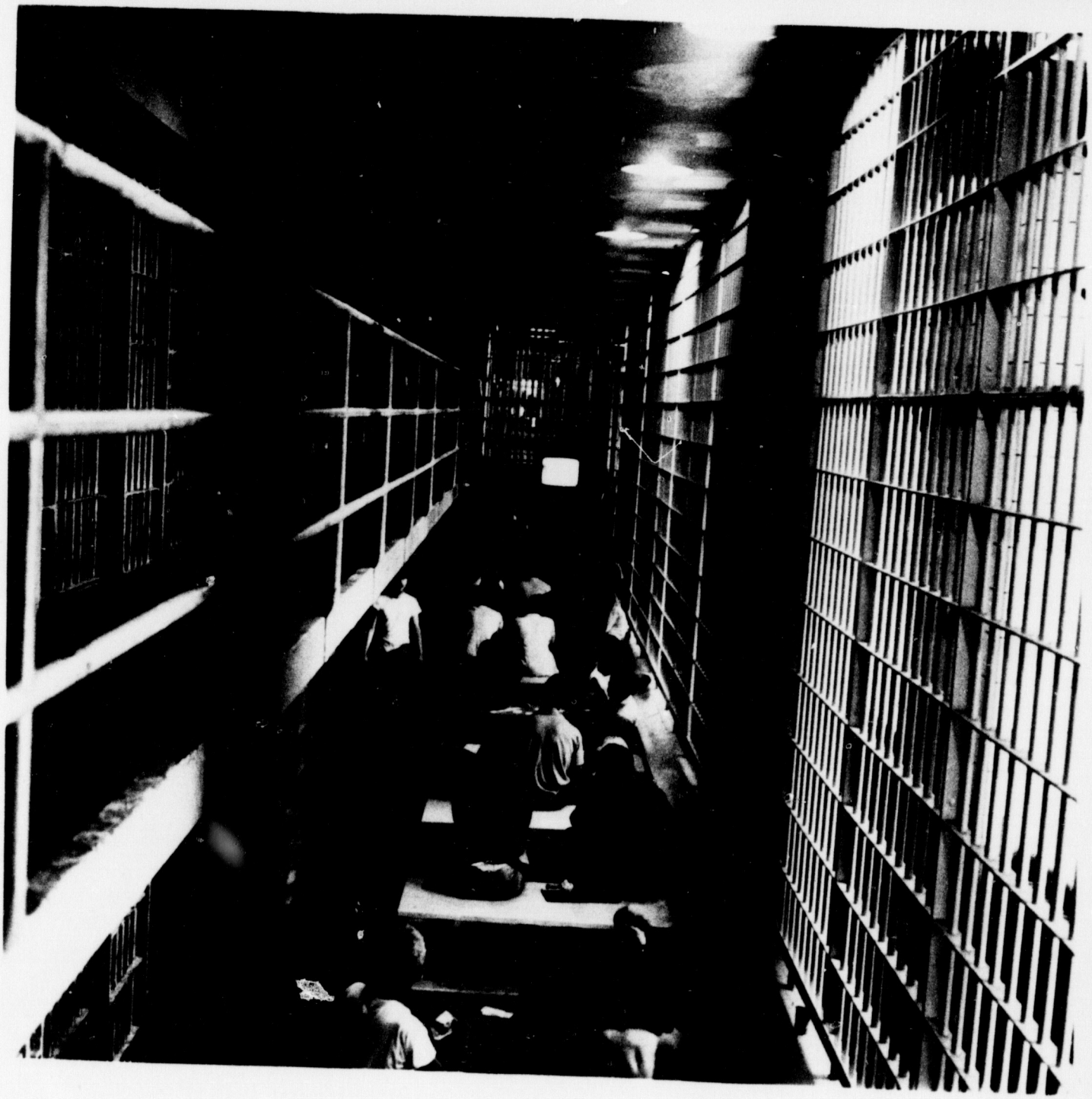
Plaintiffs' Exhibit 14-B

(See opposite) ☞

Plaintiffs' Exhibit 14-B

Plaintiffs' Exhibit 14-C

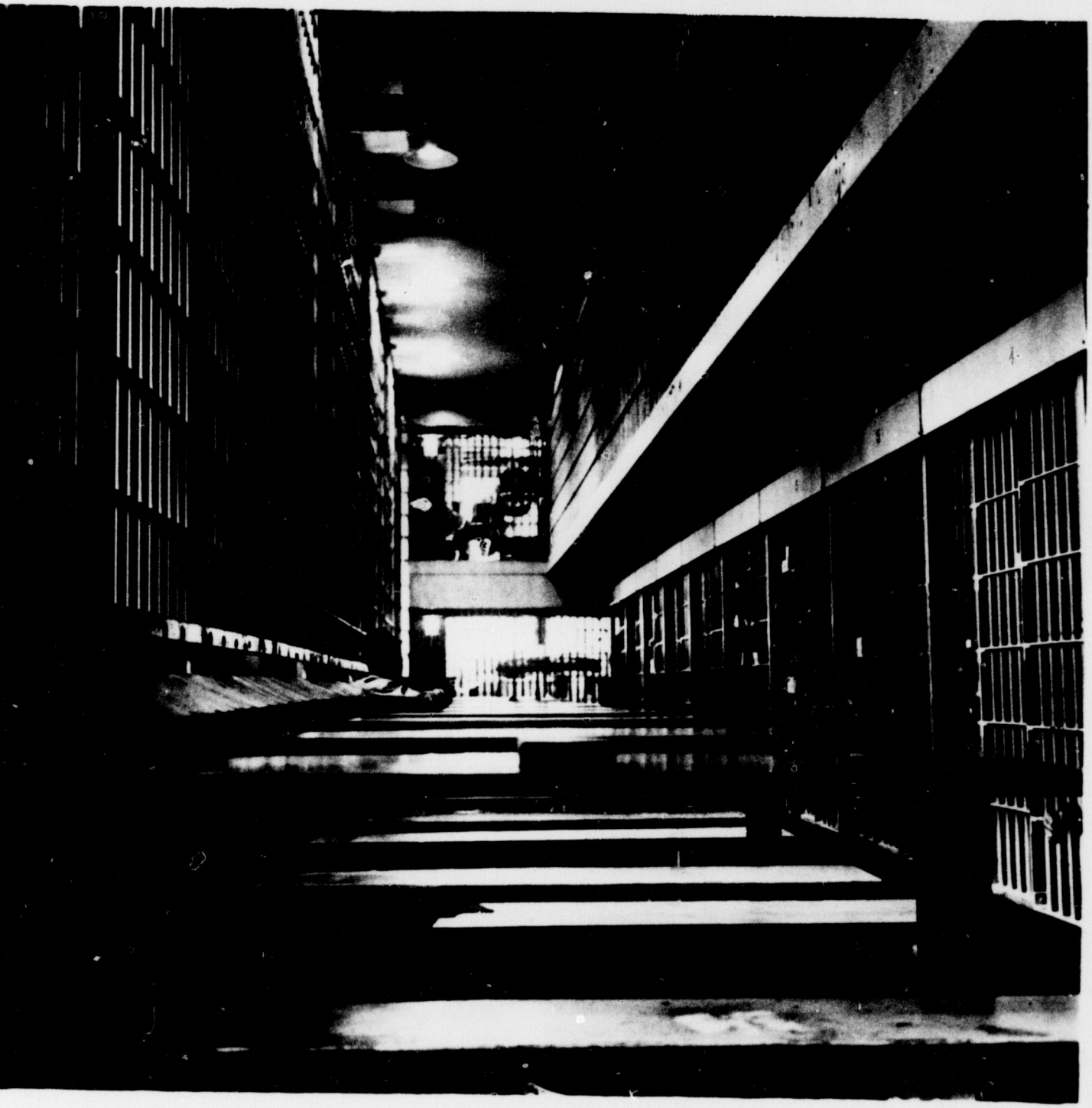
(See opposite) ☞



Plaintiffs' Exhibit 14-C

Plaintiffs' Exhibit 14-D

(See opposite) ☞



Plaintiffs' Exhibit 14-D

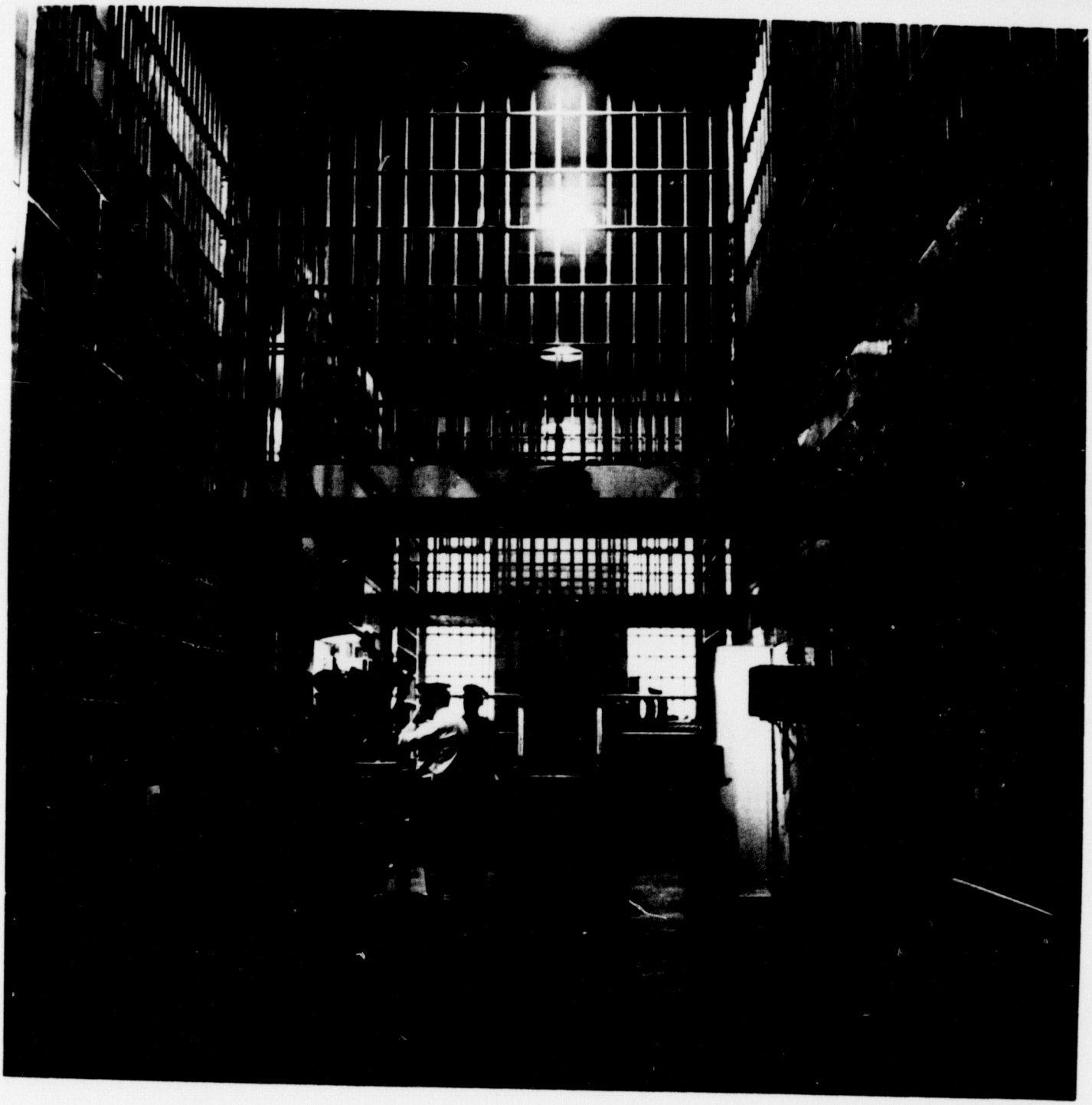
Plaintiffs' Exhibit 14-E

(See opposite) ☞

Plaintiffs' Exhibit 14-E

Plaintiffs' Exhibit 14-F

(See opposite) ☞



Plaintiffs' Exhibit 14-F

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

Chester Mitchell

being duly sworn, says that on the 9 day of Sept 19 74
at No. 15 East 40th Street in the Borough of Manhattan in New York City, he served a copy
of the annexed Notice of Motion upon Neil Getnick Esq.
the Attorney for the Defendants-Petitioners in the within entitled action, by delivering
a copy of the same to a person in charge of said Attorney's office, and leaving the same with him.

Sworn to before me, this 9
day of Sept 1974

Dennis J. Conroy

DENNIS J. CONROY
Notary Public, State of New York
No. 03-0737300
Qualified in Bronx County
Commission Expires March 30, 1975

Form 2-B-333-1032026(57)